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Please note: When the Register deadline falls on a State holiday, the deadline becomes 4:30 p.m. on Monday (the day before).

DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Service Delivery System and State Responsibilities
- 2) Code Citation: 56 Ill. Adm. Code 2600
- 3) Section Numbers: Proposed Action:
2600.20 Amendment

4) Statutory Authority: Implementing Sections 4 and 204(19) of the Job Training Partnership Act (P.L. 97-300, effective October 13, 1982 (29 U.S.C. 1501), as amended by P.L. 97-404, effective December 31, 1982 (42 U.S.C. 602); P.L. 99-496, effective October 16, 1986 (29 U.S.C. 1501); P.L. 99-570, effective October 27, 1986 (21 U.S.C. 801); and P.L. 100-418, effective October 27, 1986 (20 U.S.C. 5001)) and authorized by Section 46.42 of the Civil Administrative Code of Illinois (Ill. Rev. Stat. 1991, ch. 127, par. 46.42) [20 ILCS 605/46.42].

5) A Complete Description of the Subjects and Issues Involved: This rulemaking provides for revisions to the definitions of terms revised in the amendments of September 7, 1992 to the federal Job Training Partnership Act.

6) Will these proposed amendments replace an emergency rule currently in effect? No.

7) Does this rulemaking contain an automatic repeal date? No.

8) Do these proposed amendments contain incorporations by reference? No.

9) Are there any proposed amendments pending on this Part? No.

10) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a state mandate as defined in Section 3(b) of the State Mandates Act (Ill. Rev. Stat. 1991, ch. 85, par. 2203) [30 ILCS 805/3].

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may present their comments concerning this proposed rulemaking in writing within 45 days after this edition of the Illinois Register to the following:

Mr. Norman Sims, Deputy Director
Department of Commerce and Community Affairs
Office of Policy Development, Planning & Research
620 East Adams Street, 6th Floor
Springfield, Illinois 62701
Telephone Number: (217) 785-6174
T.D.D. Number: (217) 785-6055

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12) Initial Regulatory Flexibility Analysis:

- A) Date rule was submitted to the Business Assistance Office of the Department of Commerce and Community Affairs: Not Applicable.
- B) Types of small businesses affected: None.
- C) Reporting, bookkeeping or other procedures required for compliance: None.
- D) Types of professional skills necessary for compliance: None.

The full text of the Proposed Amendments begins on the next page:

DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

NOTICE OF PROPOSED AMENDMENTS

TITLE 56: LABOR AND EMPLOYMENT
CHAPTER III: DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRSPART 2600
SERVICE DELIVERY SYSTEM AND STATE RESPONSIBILITIES

Section
2600.10 Legislative Base
2600.20 Definitions
2600.30 Illinois Job Training Coordinating Council
2600.40 Local Service Delivery System
2600.50 Sanctions Policy
2600.60 Governor's Coordination and Special Services Plan
2600.70 Oversight and Management of Labor Market Information Programs
2600.80 Labor Standards

AUTHORITY: Implementing Sections 46.41 and 46.49 of the Civil Administrative Code of Illinois (Ill. Rev. Stat. 1991, ch. 127, para. 46.41 and 46.49) [20 ILCS 605/46.41 and 46.49], Sections 4 and 101-184 of the Job Training Partnership Act (P.L. 97-300, effective October 13, 1982, (29 U.S.C. 1501), as amended by P.L. 97-404, effective December 31, 1982, (42 U.S.C. 602); P.L. 99-496, effective October 16, 1986 (29 U.S.C. 1501); P.L. 99-570, effective October 27, 1986 (21 U.S.C. 801); and P.L. 100-418, effective August 23, 1988 (20 U.S.C. 5001)); and the Illinois Job Training Coordinating Council Act (Ill. Rev. Stat. 1991, ch. 48, para. 2101 et seq.) [20 ILCS 3975/1 et seq.] and authorized by Sections 46.40(b) and 46.42 of the Civil Administrative Code of Illinois (Ill. Rev. Stat. 1991, ch. 127, para. 46.40(b) and 46.42) [20 ILCS 605/46.40 (b) and 46.42].

SOURCE: Adopted at 8 Ill. Reg. 18073, effective September 17, 1984; amended at 9 Ill. Reg. 5591, effective April 17, 1985; amended at 9 Ill. Reg. 13068, effective August 13, 1985; amended at 10 Ill. Reg. 4795, effective March 11, 1986; emergency amendment at 10 Ill. Reg. 14830, effective August 21, 1986, for a maximum of 150 days; emergency expired January 18, 1987; amended at 11 Ill. Reg. 11653, effective June 29, 1987; emergency amendment at 13 Ill. Reg. 4028, effective March 13, 1989, for a maximum of 150 days; emergency expired August 10, 1989; amended at 13 Ill. Reg. 13839, effective August 16, 1989; amended at 13 Ill. Reg. 16417, effective October 10, 1989; amended at 15 Ill. Reg. 13102, effective August 27, 1991; amended at 16 Ill. Reg. 13241, effective August 13, 1992; amended at 18 Ill. Reg. _____, effective _____.

Section 2600.20 Definitions

The State shall adopt the following definitions for the terms listed as follows:

"Acquisition Cost of Purchased Nonexpendable Personal Property" - The net invoice unit price of the property, including the cost of modifications, attachments, accessories, or auxiliary apparatus

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necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty, or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

"Act" - Job Training Partnership Act (October of 1982) (P. L. 97-300 (29 U.S.C. 1501) as amended by P. L. 97-404 (42 U.S.C. 602), P.L. 99-496 (29 U.S.C. 1501), P.L. 99-570 (21 U.S.C. 801) and P.L. 100-418 (29 U.S.C. 5001)).

"Additional Dislocated Worker" - A displaced homemaker as that term is defined in section 4(29) of the Act.

"Adult Employability Enhancement Termination" - An outcome for adults, other than entered unsubsidized employment, which is recognized as enhancing long-term employability and contributing to the potential for a long-term increase in earnings and employment. Outcomes which meet this requirement shall be restricted to the following:

Attained Adult Employability Skills - Demonstrated proficiency as defined by the local area in one or more of the following two skill areas in which the trainee was deficient at enrollment: basic education skills and occupational skills. Employability skill gain must be the achieved through program participation and must be the result of a prior employability development planning process which identifies the participant's skill deficiencies, the training needed to overcome the deficiencies, and the level of proficiency needed for attainment of the employability skill.

Completed Major Level of Education - Completed, during enrollment, a level of educational achievement which had not been reached at entry. Levels of educational achievement are secondary and post secondary. Completion standards shall be governed by State standards and shall include a high school diploma, GED Certificate or equivalent at the secondary level, and shall require a diploma or other written certification of completion at the postsecondary level. NOTE: To obtain credit, completion of a major level of education must result primarily from active JTPA program participation of at least 90 calendar days or 200 hours.

Entered Non-Title II Training - Entered an occupational-skills employment/training program, not funded under Title II of the JTPA, which builds upon and does not

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duplicate training received under Title II. NOTE: To obtain credit, the participant must have been retained in that program for at least 90 calendar days or 200 hours or must have received a certification of occupational skill attainment. During the period the participant is in non-Title II training, he/she may or may not have received JTPA services as defined in 56 Ill. Adm. Code 2610.70.

"Applicant" - Individual who is receiving, or has received, only outreach or intake services, or both. An "applicant" may or may not become a "participant", based upon the outcome of intake and the individual's willingness to participate.

"Applicant Agency" - Educational, employment and training agencies which can provide services to workers who are affected by mass-layoff or plant closings.

"Application Date" - The date the applicant signs and dates the JTPA application certifying that the information on the form is correct to the best of his/her knowledge. In the case of a minor (except emancipated youth) the application date is the date the parent/guardian signs the application.

"Assessment" - Services designed to initially determine each applicant's/participant's employability, aptitudes, abilities, and interests, through interviews, testing, and counseling which are conducted to achieve the applicant's/participant's employment related goals.

"At Risk of Dropping Out of School" - A student without a high school diploma or GED certificate whose academic performance and/or personal behavior demonstrates that he or she is uninvolved, unmotivated, and/or disaffected. This includes a student who meets at least one of the following criteria:

Has been retained in grade at least once during the most recent four school years or has accumulated insufficient credits toward graduation.

Demonstrates a reading or math proficiency level one grade or more below the current grade placement level based on assessment results.

Lacks a demonstrated proficiency in the English language as measured by a standardized test.

Has been determined by the school district to have a behavior disorder or a learning disability.

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Is pregnant or a parent.

Has been on academic probation at any time during the prior 12 months.

Is a truant or is excessively absent as determined by an authorized school official.

Has been suspended from school five or more days during the previous or current school year.

Has been expelled from school during the previous or current school year.

Has been identified as drug or alcohol dependent by a medical authority or authorized school staff.

Is a member of a family which meets the definition of Long Term AFDC Recipient.

Is a member of a single parent household.

"Barriers to Employment" - Characteristics that may hinder an individual's hiring, promotion, or participation in the labor force. Some examples of individuals who may face barriers to employment include: single parents, women, displaced homemakers, youth, welfare recipients, older workers, addicts, alcoholics, teenage parents, veterans, racial minorities, dislocated workers, and those with limited English speaking ability or a criminal record or with a lack of education, work experience, credentials, child care arrangements, or transportation.

"Basic Education Skills" - A PIC-Recognized Youth Employment Competency skill area which includes reading comprehension, math computation, writing, speaking, listening, problem solving, reasoning, and the capacity to use these skills in the workplace.

"Chief Elected Official" - The highest elected official(s) of the unit or units of general purpose local government of which the Service Delivery Area (SDA) is configured (e.g., County Board Chairperson in multi-county SDAs or mayors in SDAs made up of a single city or a consortia of cities.) In addition, the highest elected official of any unit of local government which was a prime sponsor under Comprehensive Employment and Training Act (CETA) during Federal fiscal year 1983 (29 U.S.C. 801) is a chief elected official.

"Citizenship" - Designation of an applicant as a citizen or "eligible noncitizen" whose status permits permanent employment

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in the United States. (For JTPA recordkeeping purposes, "eligible noncitizen" includes nationals of the United States, lawfully admitted permanent resident aliens, lawfully admitted refugees and parolees, and other individuals authorized by the Attorney General to work in the United States.)

"Continued Unsubsidized Employment" - A participant who was employed at the time of enrollment in JTPA and maintained that employment throughout program participation and termination.

"Continuing CEWA Participant" - Any individual who on September 30, 1983, is enrolled in any service, training or subsidized employment program under the Comprehensive Employment and Training Act (CETA) (29-U.S.C. 801, effective October 27, 1978), and who will continue to participate in such programs after enrollment in the Job Training Partnership Act (JTPA), shall be considered a continuing CEWA participant.

"Department" - The Illinois Department of Commerce and Community Affairs.

"Discretionary Fund" - Funds reserved under Section 322(a)(3) of the Act for distribution at the Secretary of Labor's discretion to serve workers affected by multi-State or industry-wide dislocations and to areas of special need in a manner that efficiently targets resources to areas of most need, encourages a rapid response to economic dislocations, and promotes the effective use of funds.

"Dislocated Worker" - An individual who meets the eligibility requirements specified in 56 Ill. Adm. Code 2625.55 or Section 301(a) of the Act.

"Dislocated Worker Unit" - The identifiable unit within the Department which will be given the responsibility and capability to respond rapidly, on site, to permanent closures and substantial layoffs throughout the State and to provide the services described in Section 311(b)(3) of the Act.

"Displaced Homemaker" - A person who

has worked in the home for a substantial number of years providing unpaid household services for family members;

has difficulty in securing employment; and

was dependent on the income of another family member but is no longer supported by such income, or

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was dependent on federal assistance but is no longer eligible for such assistance.

"Documented Job Search Criterion" - One month job search demonstrated by current registration with the Illinois Job Service.

"Early Readjustment Assistance" - Assistance given to a Title III participant at the time of or soon after a layoff event which provides necessary early intervention services (testing, assessment, orientation, etc.).

"Economically Disadvantaged" - An individual who

receives, or is a member of a family which receives, cash welfare payments under a Federal, State, or local welfare program;

has, or is a member of a family which has, received a total family income for the six-month period prior to application for the program involved (exclusive of unemployment compensation, child support payments, and welfare payments) which, in relation to family size, was not in excess of the higher of

the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget, or

70 percent of the lower living standard income level; is included in a Public Aid Food Stamp Assistance Unit (see 89 Ill. Adm. Code 121.70);

is a foster child on behalf of whom State or local government payments are made; or

is a homeless individual.

"Education Status" -

School Dropout - An adult or youth (aged 146 - 21) who is not attending school full-time and has not received a high school diploma or a General Education Diploma (GED) certificate.

Student (High School or Less) - An adult or youth (aged 146 - 21) who has not received a high school diploma or GED certificate and is enrolled full-time in an elementary,

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secondary or post-secondary level vocational, technical, or academic school, or is between school terms and intends to return to school.

High School Graduate or Equivalent (No Post-High School) - An adult or youth (aged 14 - 21) who has received a high school diploma or GED certificate, and who has not attended any post-secondary vocational, technical, or academic school.

Post-High School Attendee - An adult or youth (aged 14 - 21) who has received a high school diploma or GED certificate and has attended (or is attending) any post-secondary level vocational, technical, or academic school.

"Eligible State" - As part of the Title III reallocation process, as specified in Section 303 of the Act, an eligible State is one which has expended at least 80 percent of its allotment for the program year prior to the program year for which the determination is made.

"Emancipated Youth" - An emancipated youth is a minor released from the control and supervision of his/her parent(s) or guardian(s) according to the provisions of The Emancipation of Mature Minors Act (Ill. Rev. Stat. 1991, ch. 40, pars. 2201 et seq.).

"Employer Outreach" - Activities involving contacts with potential employers of JTPA participants for the purpose of acquiring current employment opportunities, listings and commitments. These activities include: promoting JTPA services with local employers, job fairs, local business conferences and seminars, and similar activities and events which are necessary and are designed with the clear intent to obtain job listings and openings or current job training opportunities.

"Employment-Generating Activities" - Activities conducted for the purpose of encouraging expansion or creation of businesses which are not related to existing employment opportunities for participants but result in increased employment opportunities for JTPA-eligible individuals. These activities are not to be used strictly for economic development or as a substitute for similar activities for which funds are available under other Federal programs.

"Entered Unsubsidized Employment" - The category for participants who, at termination from the program, entered (through the efforts of the grantee/subgrantee or through their own efforts)

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full- or part-time unsubsidized employment. Unsubsidized employment means employment not financed from funds provided under the Act and includes for JTPA reporting purposes, entry into the Armed Forces, entry into employment in a registered apprenticeship program, and trainees who became self-employed, were recalled or continued unsubsidized employment.

"Entrepreneurial Training" - Training given to Title III participants which will impart the skills necessary to obtain unsubsidized employment through self-employment.

"Entry-Employment-Experience-Program" - As specified in Section 205(d) of the Act, the following restrictions and limitations apply to this activity:

The job training plan may provide for the conduct of an "entry-employment-experience-program" for youth who--

have completed preemployment skills training or its equivalent;

have not recently held a regular part-time or summer job for more than 250 hours of paid employment, except that this paragraph may be waived in accordance with criteria established in the job training plan; and

are enrolled in a secondary school or an institution offering a certified high school equivalency program and are meeting or have met the minimum academic and attendance requirements of that school or education program during the current or most recent term, with priority given to youth who do not plan to continue on to postsecondary education. Entry employment experiences may be up to 20 hours weekly during the school year or full time during the summer and holidays, for a total of not to exceed 500 hours of entry employment experience for any individual. Such experiences shall be appropriately supervised, including the maintenance of standards of attendance and worksite performance.

Entry employment experiences may be one of the following types:

Full-time employment opportunities in public and private nonprofit agencies during the summer and on a part-time basis in combination with education and training activities. These jobs shall provide

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community-improvement-services-that-complement-local expenditures.

Tryout-employment-at-private-for-profit-worksites--or at--public--and--private--nonprofit--worksites--when private--for-profit--worksites--are--not--available. Compensation-in-lieu-of-wages-for-tryout-employment shall-be-paid-by-the-grant-recipient--but-the-length of-any-assignment--to-a-tryout-employment-position shall--not--exceed--250--hours--tryout--employment positions-shall-be-the-ones-for-which-participants would-not-usually-be-hired--(because-of-lack-of experience-or-other-barriers-to-employment)--and vacancies-in-such-positions-may-not-be-refilled-if the--previous-participant--completed--the--tryout employment-but-was-not-hired-by-the-employer.

Cooperative---education---programs---to---coordinate educational-programs-with-work-in-the-private-sector.

"Equitable Services" -

Services to substantial segments (race, sex, age, national origin) and to Work Incentive (WIN) registrants and school dropouts shall be equitable. Serving those segments and status groups (i.e., WIN registrants and school dropouts) at a level equal to their incidence in the eligible population, aged 16-64, as defined by the state, shall be considered equitable. Serving those segments at a level greater or lesser than that incidence shall be considered equitable if the Service Delivery Area (SDA)

targets services to specific groups and meets requirements of Section 141 of the Act, and

provides justification for that targeting to those groups with greater need.

If, as a result of targeting or requirements of the Act, any substantial segment is served at a rate greater than its proportion within the eligible population, remaining substantial segments should be served proportionately."

"Excess Property" - Property under the control of any Federal or state agency which, as determined by the head thereof, is no longer required for its needs or discharge or its responsibilities.

"Expendable Personal Property" - All tangible personal property

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other than nonexpendable property.

"Family" - One or more persons living in a single residence who are related to each other by blood, marriage, or adoption. A step-child or a step-parent shall be considered to be related by marriage. Also, regardless of residence and/or citizenship, anyone claimed as a dependent on another person's Federal Income Tax return for the previous year shall be presumed to be part of the person's family for the current year. To negate this assumption, the person who was claimed as a dependent for income tax purposes would be required to provide information that demonstrates the individual is no longer financially dependent. Examples of information that may be provided would be a change in living arrangements or financial resources that would enable the person to become non-dependent. Regardless of living arrangements or tax dependency status, the following persons shall be considered a family of one when such consideration would result in the individual being determined eligible for program participation:

any person who is 55 years of age or older;

a handicapped person; or

an individual 18 years of age or older who receives less than 50 percent of his/her maintenance from the family, and also is not the head nor the spouse of the head of the household.

"Family Income" - All income from all sources actually received by all members of the family for the six month period prior to eligibility.

Family income shall INCLUDE:

Gross wages and salary (before deductions), except wages paid for work experience under the Act, but including wages and salary received for on-the-job training;

Net self-employment income (gross receipts minus operating expenses);

Other money income received from sources such as net rents, pensions, alimony, periodic income from insurance policy annuities, and other sources of income.

Family income shall NOT INCLUDE:

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Old Age and Survivors Insurance benefits received under Title II of the Social Security Act of 1978 (42 U.S.C. 402(1983));

Non-cash income such as food stamps, or compensation received in the form of food or housing;

Imputed value of owner-occupied property, i.e., rental value;

Gifts;

Public assistance (e.g., Aid to Families with Dependent Children (AFDC) under Title IV of the Social Security Act (SSA) (42 U.S.C. 401(1983)), General Assistance (State or local government), Refugee Act of 1980 (8 U.S.C. 1521-1525 (1983)), or Supplementary Social Security Income (SSI) under Title XVI of the SSA (42 U.S.C. 1601-1602 (1983));

Cash payments received pursuant to a State plan approved under Titles I, IV, IX, XVI and XX of the Social Security Act of 1978 (42 U.S.C. 1, 201(a), 401, 402, 1001, 1002, 1601, 1602, 2001, 2002 (1983)) or disability insurance payments received under Title II of the Social Security Act of 1978 (42 U.S.C. 201 (1983));

Federal, State or Local Unemployment benefits;

Payments made to participants in employment and training programs, except wages paid for on-the-job training (OUT) (e.g., the JTPA (29 U.S.C. 1501, December 31, 1982) and Title V of the Older Americans Act of 1965 (42 U.S.C. 3001, December 29, 1981));

Capital gains and losses;

Fixed term, unearned income, such as but not limited to;

Payments received for a limited fixed term under income maintenance programs and supplemental (private) unemployment benefits plans;

One-time or fixed-term scholarship and fellowship grants;

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Accident, health, and casualty insurance proceeds;

Disability and death payments, including fixed term (but not lifetime) life insurance annuities and death benefits;

Inheritance, including fixed term annuities;

Fixed term workers' compensation awards;

Terminal leave pay;

Soil bank payments;

Agriculture crop stabilization payments;

Pay or allowances which were received by any veteran while serving on active duty in the Armed Forces;

Educational assistance and compensation payments to veterans and other eligible persons under Chapters 11, 13, 31, 34, 35, and 36 of Title 38 (Veterans' Benefits) of the U.S.C. (38 U.S.C. 301, 401, 1501, 1650, 1700, 1770);

Payments received under the Trade Readjustment Act of 1974 (19 U.S.C. 2291, January 3, 1975);

Black Lung payments received under the Benefits Reform Act of 1977 (30 U.S.C. 901, December 29, 1981); and

Child support payments.

"Farm" - A farm is identified on the basis of sales alone and is defined as any place which produced agricultural products with annual sales of \$1,000 or more.

"Follow-Up" - The collection of information on a terminee's employment situation thirteen (13) weeks after termination from the program.

"Food Stamp Recipient" - An individual who is included in a Public Aid Food Stamp Assistance Unit (see 89 Ill. Adm. Code 121.70).

"Grant"---An-award-of-financial-assistance,-including-cooperative

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agreements, in the form of money, or property in lieu of money, by the Department to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, or guarantees, interest, subsidies, insurance, or direct appropriations. Also, the term does not include assistance such as a fellowship or other lump sum award, for which the grantee is not required to account.

"Grant Recipient" - Grant recipients are particular types of grantees identified in an agreement required under Section 103(b)(1) of the Act between the chief elected official or officials and the private industry council in the SDA grant recipient.

"Grantee" - The organization to which a grant is awarded by the Department and which is accountable for the use of the funds provided.

"Grantor" - The Department of Commerce and Community Affairs.

"Handicapped Individual" - Any individual who has a physical or mental disability which for such individual constitutes or results in a substantial handicap to employment.

"High Unemployment SDA" - As part of the Title III reallocation process, an SDA which is among those SDAs which have unemployment rates greater than the statewide average unemployment for the most recent 12 months for which data are available from the Illinois Department of Employment Security.

"Homeless Individual" - A homeless person is an individual who lacks a fixed, regular or adequate nighttime residence or whose primary nighttime residence is:

- a supervised publicly or privately operated shelter designed to provide temporary living accommodations,
- an institution that provides a temporary residence for individuals intended to be institutionalized, or
- a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

"Illinois Job Training Coordinating Council" - The advisory body appointed by the Governor to make recommendations on issues related to employment and training in the State. The council shall be comprised of membership consistent with Section 122(a)(3) of the Act (as amended by P.L. 100-418) and shall

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perform those functions delineated in Sections 122(b) and 317 of the Act and the Illinois Job Training Coordinating Council Act (Ill. Rev. Stat. 1991, ch. 48, pars. 2101 et seq.).

"Inactive Status Period" - The time period between last receipt of employment and/or training funded under a given title and the actual date of termination from the title.

"Income Maintenance" - Any program providing financial assistance to persons in financial need.

"Individual Readjustment Plan" - An individualized plan for the Title III participant which assesses during intake, participant skills and needs. This plan then develops a readjustment strategy, detailing those basic readjustment services necessary to allow the participant to either begin training or obtain employment.

"Ineligible" - A participant who, subsequent to enrollment, was found to not meet eligibility requirements for participation in the JTPA title in which he or she was enrolled.

"Intake" - Includes the screening of an applicant for eligibility to determine:

whether the program can benefit the individual (e.g., whether the applicant's educational and vocational needs can be met through the program);

the employment and training activities and services which would be appropriate for that individual;

availability of an appropriate employment and training activity;

a decision on selection for participation in accordance with 56 Ill. Adm. Code 2610.80; and

dissemination of information on the program (see 56 Ill. Adm. Code 2610.130(c)).

"JOBS Program Participant" - Any individual (AFDC client) who is a participant (or has been a participant within the prior six months) in assessment or employability planning or is assigned to one of the JOBS Program components defined in the approved State JOBS Program Plan, including self-initiating activities, at the time of eligibility determination for JTPA Title II-A.

"Job-Specific Skills" - A PIC-Recognized Youth Employment

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Competency skill area which includes primary and secondary job-specific skills. Primary job-specific skills encompass the proficiency to perform actual tasks and technical functions required by certain occupational fields at entry, intermediate or advanced levels. Secondary job-specific skills entail familiarity with and the use of set-up procedures, safety measures, work-related terminology, recordkeeping and paperwork formats, tools, equipment and materials, and breakdown and clean-up routines.

"Job Training Plan" - A two year program plan for the SDA prepared in accordance with Section 104 of the Act and the Department's rules. (See 56 Ill. Adm. Code 2610)

"Joint Costs" - Joint costs means a cost which benefits more than one cost objective.

"Labor Force Status" -

Employed -

An individual who, during the 7 consecutive days prior to application to a JTPA program, did any work at all:

as a paid employee;

in his or her own business, profession or farm, or

worked 15 hours or more as an unpaid worker in an enterprise operated by a member of the family; and

An individual who was not working, but has a job or business from which he or she was temporarily absent because of illness, bad weather, vacation, labor-management dispute, or personal reasons, whether or not paid by the employer for time off, and whether or not seeking another job. (This term includes members of the Armed Forces on active duty, who have not been discharged or separated, participants in registered apprenticeship programs, and self-employed individuals.)

Unemployed - An individual who did not work during the 7 consecutive days prior to application for a JTPA program, who made specific efforts to find a job within the past 4 weeks prior to application, and who was available for work

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during the 7 consecutive days prior to application (except for temporary illness).

Not in Labor Force - A civilian 14 years of age or over who did not work during the 7 consecutive days prior to application for a JTPA program and is not classified as employed or unemployed.

Employed Part-Time - An individual who is regularly scheduled for work less than 30 hours per week.

Unemployed 15 or More Weeks of Prior 26 Weeks - An individual who is unemployed at the time of application and has been unemployed for 15 or more weeks of the 26 weeks immediately prior to application, has made specific efforts to find a job throughout the period of unemployment, and is not classified as "Not in Labor Force".

"Labor-Management Committees" - Committees voluntarily established to respond to actual or prospective worker dislocation, which ordinarily include (but are not limited to) the following:

shared and equal participation by workers and management;

shared financial participation between the company and the SDA, using funds provided under Title III of the Act, in paying for the operating expenses of the committee; a chairperson, to oversee and guide the activities of the committee, who shall be jointly selected by the labor and management members of the committee, who is not employed by or under contract with labor or management at the site, and who shall provide advice and leadership to the committee and prepare a report on its activities;

the ability to respond flexibly to the needs of affected workers by devising and implementing a strategy for assessing the employment and training needs of each dislocated worker and for obtaining the services and assistance necessary to meet those needs;

a formal agreement, terminable at will by the workers or the company management, and terminable for cause by the Governor (e.g., violations of the Act, fraud, termination of funding); and

local job identification activities (e.g., approaching supplier firms to hire dislocated workers or hosting events to bring together local employers to interview dislocated

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workers) by the chairman and members of the committee on behalf of the affected workers.

"Limited English Language Proficiency" - Inability of an applicant, whose native language is not English, to communicate in English, resulting in a job handicap.

"Local Elected Official" - Includes all county and municipal officers (and their designees) such as county board members, mayors, and city or village council members.

"Lower Living Standard Income Level" - That income level (adjusted for regional, metropolitan, urban, and rural differences and family size) determined annually by the Secretary based on the most recent "lower living family budget" issued by the Secretary.

"Major Plant Closing" - When plant closing employs over 100 persons.

"Mass Layoff" - When over 100 persons are on layoff from a plant.

"Mathematics Grade Level" - The grade level results for an adult or youth on mathematics skills as assessed on a generally accepted standardized test (e.g., Test of Adult Basic Education (TABE), Wide Range Achievement Test (WRAT)).

"Minimal Work History" - An adult or youth who did not work for the same employer for longer than three consecutive months in the two years prior to JTPA eligibility determination.

"Monetary Eligibility" - A claimant's eligibility for a weekly benefit amount of unemployment insurance and the amount of dependency allowance, if any, based on the amount of qualifying wages paid.

"Months received AFDC (last 30 months)" - the number of months an adult or youth (or the family of an adult or youth) received cash payments under AFDC (SSA Title IV) during any of the 30 months prior to eligibility determination.

"Multiple Barriers to Employment" - Any adult or youth who has three or more of the following barriers to employment:

- school dropout,
- limited english language proficiency,
- handicapped/disabled,

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offender,

reading skills below the 7th grade level,

math skills below the 7th grade level,

long-term AFDC recipient,

lacks significant work history,

homeless,

JOB Program participant,

substance abuse,

pregnant/parenting teen.

"Nonexpendable Personal Property" - Tangible personal property having a useful life of more than one year and an acquisition cost of \$300 or more per unit.

"Offender" - An adult or youth who requires assistance in overcoming barriers to employment resulting from a record of arrest or conviction (excluding misdemeanors).

"Older Individual" - An individual who is 55 years of age or older.

"Older Worker" - An individual who is 55 years of age or older.

"Other Termination" - The termination of a participant who left the grantee's/subgrantee's program for a positive or non-positive reason other than to enter unsubsidized employment, or for youth a reason specified in the definition of "Youth Employability Enhancement Termination".

"Out-of-Area Job Search" - Assistance provided to a participant for expenses that occur as a result of seeking unsubsidized employment in an area outside a reasonable commuting distance from the participant's residence. Reasonable, for the purposes of this definition, will be defined by the local Private Industry Council. Service must be provided near the end of, or within 90 days after the completion of other retraining services.

"Outreach" - An activity which involves the collection, publication, and dissemination of information on program services directed toward economically disadvantaged and other individuals eligible to receive JTPA training and support services.

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"Participant" - An individual who:

has been determined eligible for participation upon intake and

has started receiving employment, training, or services (except post-termination services) funded under the Act, following intake. Individuals who receive only outreach and/or intake and assessment services or post-program follow-up are excluded.

"Participant Carried Over" - A participant for whom there was an active participant record on file at the end of the previous program year.

"Part-Time Student" - An adult or youth who has not received a high school diploma or GED certificate but is enrolled in a secondary school or an institution offering a certified high school equivalency program on a less than full-time schedule.

"Personal Property" - Personal property of any kind except real property. It may be tangible - having physical existence, or intangible - having no physical existence, such as patents, inventions, and copyrights.

"PIC" - Private Industry Council.

"PIC Membership Selection Agreement" - An agreement negotiated pursuant to Section 102(d)(2) of the Act and Section 2600.40(e)(1) of this Part between chief elected officials within the SDA which specifies how members of the PIC shall be selected.

"Post Termination Services" - Supportive services available to individuals who terminate as, "entered employment," which are determined necessary to assist such individuals in retaining employment. These services may be provided for no more than 6 months following completion of training.

"Poverty Level" - The annual income level at, or below, which families are considered to live in poverty, as annually determined by the Department of Health and Human Services.

"Preemployment-Skills-Training-Program" - As specified in Section 205(c) of the Act, the following restrictions and limitations apply to this activity:

The job-training plan may provide for the conduct of - a "preemployment - skills - training - program" for - youth - and individuals - aged - 14 - and - 15 - with - priority - being - given - to

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those - individuals - who - do - not - meet - established - levels - of academic - achievement - and - who - plan - to - enter - the - full - time labor - market - upon - leaving - school;

the - preemployment - skill - training - program - may - provide - youth up - to - 200 - hours - of - instruction - and - activities;

the - instruction - and - activities - may - include - -

assessment; testing; and counseling;

occupational - career - and - vocational - exploration;

job - search - assistance;

job - holding - and - survival - skills - training;

basic - life - skills - training;

remedial - education;

labor - market - information; and

job - seeking - skills - training.

"Pre-Employment Skills and Work Maturity Skills" - A PIC-Recognized Youth Employment Competency skill area which includes both pre-employment skills and work maturity skills. Pre-employment skills include world of work awareness, labor market knowledge, occupational information, values clarification and personal understanding, career planning, decision making, and job search techniques (e.g., resumes, interviews, applications, and follow-up letters). They also encompass survival/daily living skills such as using the telephone, telling time, shopping, making change, renting an apartment, opening a bank account and using public transportation. Work Maturity skills include positive work habits, attitudes, and behavior such as punctuality, regular attendance, presenting a neat appearance, getting along and working well with others, exhibiting good conduct, following instructions and completing tasks, accepting constructive criticism from supervisors and co-workers, showing initiative and reliability, and assuming the responsibilities involved in maintaining a job. This category also entails developing motivation and adaptability, obtaining effective interpersonal relations, coping and problem-solving skills, and acquiring an improved self image. Individuals should demonstrate proficiency in each of the following 11 core competencies. In order for an attainment to be reported in the area of pre-employment/work maturity, at least one PIC-certified

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competency statement must be developed/quantified in each of the following 11 core competencies - provided that at least 5 of these learning objectives were achieved during program intervention:

- making career decisions;
- using labor market information;
- preparing resumes;
- filling out applications;
- interviewing;
- being consistently punctual;
- maintaining regular attendance;
- demonstrating positive attitudes/behavior;
- presenting appropriate appearance;
- exhibiting good interpersonal relations; and
- completing tasks effectively.

"Pregnant/Parenting Teen" - Any individual, under twenty years of age, who is the parent or guardian of one or more children or any female, under twenty years of age, who is pregnant.

"Pre-layoff Services" - Readjustment assistance (as defined in Section 314(c) of the Act) given to a Title III participant, after the announcement of a layoff and before that layoff becomes effective.

"Previous Occupation SOC Codes" - The Standard Occupational Classification (SOC) codes associated with the client's previous employment.

"Private Industry Council" - The Council established pursuant to Section 102 of the Job Training Partnership Act (29 U.S.C. 1512, December 31, 1982). The Council will be comprised of membership consistent with Section 102(a) of the Act and will perform those functions delineated in Section 103(a) of the Act.

"Program Dropout" - A participant who, after enrollment, does not participate in the training and/or service activity(ies) in which he or she was enrolled sufficiently to benefit from the program.

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"Program Year" (PY) - The months of July through June.

"Public Assistance" - Federal, State, or local government cash payments for which eligibility is determined by a need or income test. NOTE: This term is used for eligibility determination and includes the three groups included in "welfare recipient", plus recipients of Supplemental Security Income (SSI), but is not limited to these assistance programs.

"Race/Ethnic Group" - The basic racial and ethnic categories for use in all Federally funded programs are defined by the Office of Management and Budget as follows:

White, Not Hispanic - A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

Black, Not Hispanic - A person having origins in any of the black racial groups of Africa.

Hispanic - A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

American Indian or Alaskan Native - A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

Asian or Pacific Islander - A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands, and Samoa. (Hawaiian Natives are included herein.)

"Reading Grade Level" - The English reading skills grade level for an adult or youth on a generally accepted standardized test (e.g., Test of Adult Basic Education (TABE), Wide Range Achievement Test (WRAT), Job Corps Reading Test).

"Real Property" - Land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

"Recalled" - A client who, after enrollment in a JTPA program, returns to a firm from which he or she was laid off.

"Recipient" - The governor of the State of Illinois.

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"Referral" - The act of bringing to the attention of an employer, a local office, a training sponsor, or a supportive service agency, an individual (or group of individuals) who needs a job, training, or related supportive services.

"Registered Apprenticeship Program" - A formal written occupational training program which combines on-the-job training and related instruction and in which workers learn the practical and conceptual skills required for a skilled occupation, craft, or trade. Apprenticeship programs must meet 22 criteria specified in 29 CFR 29.5 (as revised July 1, 1989, with no later amendments or editions) to be registered by the Secretary of Labor or designated state representative. Apprentices who complete the program are awarded a certificate of completion by the Bureau of Apprenticeship and Training and/or the state Apprenticeship Council in those states certified as meeting federal requirements.

"Relocation" - Assistance provided to a participant for all or part of the expenses resulting from a participant and his or her family moving to a labor market within which the participant does not currently reside. Criteria for receiving funds under this category include but are not limited to:

a determination is made that the participant cannot secure suitable employment within the labor market;

documentation that the participant has obtained a bonafide employment offer; and

the occupation is related to vocational retraining received as a result of the program.

"Relocation Assistance" - The activities necessary to arrange for a family to move to a new abode for the purpose of accepting long-duration employment. Activities may include, but are not limited to: the cost of the actual transfer of goods and property, including mileage for the family's travel; emergency assistance; rent subsidies; and other supportive services.

"Residence" - An individual's principle dwelling or home.

"Satisfactory Progress in School - A Service Delivery Area, in cooperation with the local school system, must develop a written policy which defines an individual standard of progress that each participant is required to meet. Such a standard should, at a minimum, include both a qualitative element of a participant's progress, (e.g., performance on a criterion referenced test or a grade point average) and a quantitative element (e.g., a time

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limit for completion of the program or course of study). This policy may provide for exceptional situations in which students who do not meet the standard of progress are nonetheless making satisfactory progress during a probationary period because of mitigating circumstances.

"SDA Grant Recipient" - The entity that receives JTPA funds for a service delivery area (SDA). SDA grant recipients are particular types of grantees/subrecipients.

"Secretary" - The Secretary of the United States Department of Labor.

"Selective Service Registrant" - Any individual who must register, as required by Section 3 of the Military Selective Service Act (50 U.S.C. App. 453 (1982)).

"Service Delivery Area" (SDA) - An area comprised of one or more units of general local government designated by the Governor to promote effective delivery of job training services under JTPA in accordance with Section 101 of the Act.

"Service Providers" - These individuals, corporations, partnerships, firms, organizations, associations or institutions that carry out activities pursuant to Sections 123, 124, 204, 252 and 314 of the JTPA or receive JTPA funds under the supportive services or training cost categories.

"Single Head of Household with Dependent Children" - A single, abandoned, separated, divorced or widowed individual who has responsibility for one or more dependent children under age 18.

"State" - The State of Illinois.

"State Plan" - The biennial plan for Title III activities in the State prepared by the Governor in accordance with Section 311 of the Act and 20 CFR 631.36 (as revised April 1, 1990, with no later amendments or editions).

"State Reserve Fund" - That portion of the State's funds, allotted in accordance with Section 302(b) of P.L. 97-300 (as amended by P.L. 100-418), reserved to the Governor under Section 302(c)(1) for the uses described in that section.

"Subgrant" - An award of financial assistance in the form of money or property in lieu of money made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form

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of assistance which is excluded from the definition of "grant" in this Section:

"Subgrantee" - The organization to which a subgrant is awarded by a grantee of the Department and which is accountable to the grantee for the use of the funds provided. For JTPA purposes, distinguishing characteristics of a subrecipient include items such as determining eligibility of applicants, enrollment of participants, performance measured against meeting the objectives of the program, responsibility for programmatic decisionmaking, responsibility for compliance with program requirements, and use of the funds awarded to carry out a JTPA program or project, as compared to providing goods or services for a JTPA program or project (vendor). Depending on local circumstances, the PIC, local elected official, or administrative entity may be a subrecipient. SDA grant recipients and JTPA Title III substate grantees are particular types of subrecipients.

"Subrecipient" - The legal entity to which a subgrant is awarded and which is accountable to the recipient (or higher tier subrecipient) for the use of the funds provided. For JTPA purposes, distinguishing characteristics of a subrecipient include items such as determining eligibility of applicants, enrollment of participants, performance measured against meeting the objectives of the program, responsibility for programmatic decisionmaking, responsibility for compliance with program requirements, and use of the funds awarded to carry out a JTPA program or project, as compared to providing goods or services for a JTPA program or project (vendor). Depending on local circumstances, the PIC, local elected official, or administrative entity may be a subrecipient. SDA grant recipients and JTPA Title III substate grantees are particular types of subrecipients.

"Subsidized Employment" - Employment created in the public sector and in private for-profit or nonprofit organizations which is financed by the recipient's program funds. Subsidized employment includes work experience. (On-the-Job Training (OJT) is a reportable training activity, rather than subsidized employment.)

"Substance Abuser" - An adult or youth determined to be drug or alcohol dependent as determined by a medical authority or authorized school staff (e.g., guidance counselor, principal, school nurse).

"Substantial Layoff" - Any reduction in force which is not the result of a plant closing and which results in an employment loss at a single site of employment during any 30-day period for:

At least 33 percent of the employees (excluding employees regularly working less than 20 hours per week); and

At least 50 employees (excluding employees regularly working less than 20 hours per week); or at least 500 employees excluding employees regularly working less than 20 hours per week).

"Substate Area" (SSA) - An area comprised of one or more existing Service Delivery Areas, designated by the Governor to promote the effective delivery of services to dislocated workers in

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accordance with Section 312(a) of the Act.

"Substate Grantee" - The entity which is designated, in accordance with the procedures described in Section 312(b) of the Act, as having the responsibility for providing the services described in Section 314(c), (d), and (e) of the Act pursuant to an agreement with the Governor and in accordance with the State plan and the substate plan.

"Substate Plan" - A Title III program plan for the substate areas prepared in accordance with Section 313 of the Act, the State plan, and such instructions as the Department issues in complying with 20 CFR 631.50 (revised as of April 1, 1990, with no later amendments or editions).

"Summer Months" - The months of May through September.

"Terminal Leave Pay" - Severance pay or payment received in lieu of accrued benefits when an individual terminates employment.

"Termination" - The separation of a participant from a given title of the Act who is no longer receiving employment, training or services (except post-termination services) funded under that title. NOTE: Individuals may continue to be considered as participants for a period of 90 days after last receipt of employment or training funded under a given title.

"UC Claimant" - Any individual who has filed a claim and has been determined monetarily eligible for benefit payments under one or more State or Federal unemployment compensation (UC) programs, and who has not exhausted benefit rights or whose benefit year has not ended.

"UC Exhaustee" - Any individual who has exhausted his unemployment compensation benefits (not including Extended, Additional State, or Federal Supplemental Benefits) for which he has been determined monetarily eligible.

"Unsubsidized Employment" - Employment not financed from funds provided under the Act.

"Upgrading Training" - Training given to an individual who needs such training to advance above an entry-level or dead-end employment position.

"Vendor" - An entity responsible for providing generally required goods or services to be used in the JTPA program. These goods or services may be for the recipient's or subrecipient's own use or for the use of participants in the program. Distinguishing

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Characteristics of a vendor include items such as:

providing the goods and services within normal business operations;

providing similar goods and services to many different purchasers, including purchasers outside the JTPA program; and

operating in a competitive environment.

A vendor is not a subrecipient and does not exhibit the distinguishing characteristics attributable to a subrecipient as defined above. Any entity directly involved in the delivery of program services not available to the general public, with the exception of an employer providing on-the-job-training, shall be considered a subrecipient rather than a vendor.

"Veteran" - A person who served on active duty in the military, naval, or air service (of the United States) for a period of more than 180 days and who was discharged or released therefrom with other than a dishonorable discharge or was discharged or released from active duty because of a service-connected disability.

NOTE: The term "active" means full-time duty in the Armed Forces, other than duty for training in the reserves or National Guard. Any period of duty for training in the reserves or National Guard, including authorized travel, during which an individual was disabled from a disease or injury incurred or aggravated in the line of duty, is considered "active" duty.

Recently Separated Veteran - Any veteran who applies for participation under any title of the Act within 48 months of the discharge or release from active military, naval, or air service.

Disabled Veteran - A veteran

who is entitled to compensation under laws administered by the Veterans' Administration, or

an individual who was discharged or released from active duty because of a service-connected disability.

Vietnam-Era Veteran - A veteran any part of whose active military, naval, or air service occurred between August 5, 1964 through May 7, 1975.

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"Vocational Exploration Program (VEP)" - A program for the purpose of exposing individuals to the operation and types of jobs available in the private sector through observation of such jobs and instruction including, where appropriate, limited practical experience.

"Welfare Recipient" - An individual who receives or whose family receives cash payments under Aid to Families with Dependent Children (AFDC) (Social Security Act (SSA) Title IV) (42 U.S.C. 401 (1983)), General Assistance (State or local government), or the Refugee Act of 1980 (8 U.S.C. 1521-1525 (1983)). (For proposed performance standards purposes, this term excludes recipients of Supplementary Security Income (SSI) Title XVI of the Social Security Act (42 U.S.C. 1601, 1602 (1983)).

"Work Experience" - Work--experience--is--a short-term or part-time, subsidized work assignment with an public or private nonprofit employing agency for a participant who needs assistance in becoming accustomed to basic work requirements. Work experience is prohibited in the private for-profit sector unless--the individual--employed--is--a youth--aged--16--to--21 inclusive--who is economically disadvantaged as required by Section 141(k) of the Act and the employment is provided in accordance with Section 205(d)(3)(B) of the Act except for limited internships and entry employment experience programs, as provided in Section 264(c)(1)(F) and (H).

Work experience is designed to promote the development of good work habits and basic work skills for individuals who have never worked or who have been out of the labor force for an extended period of time including, but not limited to:

students;

summer youth;

school dropouts;

individuals with disabilities; and

older workers.

Participation in work experience shall be for a reasonable length of time, based on the needs of the participant, which shall be documented in the participant's ISS. Generally, work experience for adults may not exceed the later of 6 months or 499 hours if working part-time. The ISS shall include a justification in each case where work experience is authorized in excess of these limits for adults.

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Work experience conducted under Titles II-A and II-C shall be accompanied, either concurrently or sequentially, by other services designed to increase the basic education and/or occupational skills of the participant, as documented in the ISS.

Work experience is not an allowable activity under Title III of the Act.

"Youth" - An individual who is aged 16 through 21. (Individuals aged 14 and 15 may participate in a "preemployment skills training program" for youth).

"Youth Competency System" - A sufficiently developed youth employment competency system must include the following structural and procedural elements:

Quantifiable Learning Objectives - PIC-recognized competency statements that are quantifiable, employment-related, measurable, verifiable learning objectives that specify the proficiency to be achieved as a result of program participation. Employment competencies/quantifiable learning objectives approved by the PIC as relevant to the SDA must include a description of the skills/knowledge/attitudes/behavior to be taught, the levels of achievement to be attained, and the means of measurement to be used to demonstrate competency accomplishment. The level of achievement selected should enhance the youth's employability and opportunities for postprogram employment.

Related Curricula, Training Modules, and Approaches - Focused curricula, training modules, or behavior modification approaches which teach the employment competencies in which youth are found to be deficient. Such related activities, components, or courses must encompass participant orientation, work-site supervisor/instructor/community volunteer training, and staff development endeavors as appropriate. They also must include, as appropriate, relevant agreements, manuals, implementation packages, instructions, and guidelines. A minimum duration of training must be specified which allows sufficient time for a youth to achieve those skills necessary to attain his/her learning objectives.

Pre-Assessment - Assessment of participant employment competency needs at the start of the program to determine if a youth requires assistance and is capable of benefiting from available services. A minimum level of need must be established before a participant is eligible

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to be tracked as a potential "attained PIC-recognized youth employment competency" outcome. All assessment techniques must be objective, unbiased and conform to widely accepted measurement criteria. Measurement methods used must contain clearly defined criteria, be field tested for utility, consistency, and accuracy, and provide for the training/preparation of all raters/scorers.

Post-Assessment (Evaluation) - Evaluation of participant achievement at the end of the program to determine if competency-based learning gains took place during project enrollment. Intermediate checking to track progress is encouraged. All evaluation techniques must be objective, unbiased and conform to widely accepted evaluation criteria. Measurement methods used must contain clearly defined criteria, be field tested for utility, consistency, and accuracy, and provide for the training/preparation of all raters/scorers.

Employability Development Planning - Use of assessment results in assigning a youth to appropriate learning activities/sites in the proper sequence to promote participant growth and development, remedy identified deficiencies, and build upon strengths.

Documentation - Maintenance of participant records and necessary reporting of competency-based outcomes to document intra-program learning gains achieved by youth.

Certification - Proof of youth employment competency attainment in the form of a certificate for participants who achieve predetermined levels of proficiency to use as evidence of this accomplishment and to assist them in entering the labor market.

"Youth Employability Enhancement Termination" - An outcome for youth, other than entered unsubsidized employment, which is recognized as enhancing long-term employability and contributing to the potential for long-term increase in earnings and employment. Outcomes which meet this requirement shall be restricted to the following:

Attained (two or more) PIC-Recognized Youth Employment Competencies - Demonstrated proficiency as defined by the PIC in two or more of the following three skill areas in which the client was deficient at enrollment: Pre-employment/Work Maturity; Basic Education; or Job-specific Skills. Competency gains must be achieved through program participation and tracked through

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sufficiently developed systems that must include: quantifiable learning objectives, related curricula/training modules, pre- and post assessment, employability planning, documentation and certification.

Returned to Full-Time School - The total number of youth who,

had returned to full-time secondary school (e.g., junior high school, middle school and high school), including alternative school, if, at the time of intake the participant was not attending school, exclusive of summer, and had not obtained a high school diploma or equivalent and

prior to termination had been retained in school for one semester or at least 120 calendar days.

NOTE: Alternative School - A specialized, structured curriculum offered inside or outside of the public school system which may provide work/study and/or GED preparation.

Remained in School - The total number of youth who, prior to termination, had been retained in full-time secondary school, including alternative school, for one semester or at least 120 calendar days. A youth may be terminated with this enhancement only if he/she was attending school at the time of intake, had not received a high school diploma or equivalent, and was considered "at risk of dropping out of school", as defined by the Governor in this Section in consultation with the Illinois State Board of Education.

NOTE: To obtain credit for Returned to Full-Time School or Remained in School, SDAs must be prepared to demonstrate that retention results from continuing participation in JTPA activities and the youth must be making satisfactory progress in school, and for youth aged 16-21: attain a PIC-approved Youth Employment Competency in Basic Skills or Job Specific Skills and for individuals aged 14-15: attained a PIC-approved Youth Employment Competency in Pre-employment/Work Maturity or Basic Skills.

Completed Major Level of Education - The total number of adults/youth who, prior to termination, had completed, during enrollment, a level of educational achievement which had not been reached at entry. Levels of educational achievement are secondary and post secondary. Completion standards:

shall be governed by state standard; and

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shall include a high school diploma, GED certificate or equivalent at the secondary level; and

shall require a diploma or other written certification of completion at the post-secondary level.

NOTE: To obtain credit, completion of a major level of education must result primarily from JTPA program participation of at least 90 calendar days or 200 hours.

Entered Non-Title II Training - The total number of adults/youth who, prior to termination, had entered an occupational-skills employment/training program, not funded under Title II of the JTPA, which builds upon and does not duplicate training received under Title II.

NOTE: To obtain credit, the participant must have been retained in that program for at least 90 calendar days or 200 hours or must have received a certification of occupational skill attainment. During the period the participant is in non-Title II training, he/she may or may not have received JTPA services.

(Source: Amended at 18 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Technology Advancement and Development Act Programs

- 2) Code Citation: 14 Ill. Adm. Code 545

- 3) Section Numbers:
- | | |
|--------|-------------------------|
| 545.10 | <u>Proposed Action:</u> |
| 545.30 | Amendment |
| 545.40 | Amendment |
| 545.50 | Amendment |
| 545.60 | Amendment |
| 545.70 | Amendment |

- 4) Statutory Authority: Implementing and authorized by the Technology Advancement and Development Act (Ill. Rev. Stat. 1991, ch. 127, par. 3701-1 et seq.) [20 ILCS 700/1001]; and as amended by Public Act 88-453.

- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking revises the program rules for the Technology Challenge Grant Program. In particular, it provides for: grants to seed business associations who propose projects that will stimulate technology development and adoption, and grants that have a training component as part of a modernization project. The amendments make the rules consistent with amendments to the underlying legislation. Also, grantee reporting requirements have been changed to allow reporting requirements to be determined on an individual grant basis, rather than for the program as a whole.

- 6) Will these proposed amendments replace an emergency rule currently in effect? No.

- 7) Does this rulemaking contain an automatic repeal date? No.

- 8) Do these proposed amendments contain incorporations by reference? No.

- 9) Are there any proposed amendments pending on this Part? No.

- 10) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a state mandate as defined in Section 3(b) of the State Mandates Act (Ill. Rev. Stat. 1991, ch. 85, par. 2203) [30 ILCS 805/3].

- 11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may present their comments concerning this proposed rulemaking in writing within 45 days after this edition of the Illinois Register to the following:

Mr. Norman Sims, Deputy Director

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Department of Commerce and Community Affairs
Office of Policy Development, Planning & Research
620 East Adams Street, 6th Floor
Springfield, Illinois 62701

Telephone Number: (217) 785-6174

T.D.D. Number: (217) 785-6055

- 12) Initial Regulatory Flexibility Analysis:

- A) Date rule was submitted to the Business Assistance Office of the Department of Commerce and Community Affairs: Not Applicable.
- B) Types of small businesses affected: Grants are primarily used to fund organizations that assist businesses that use science and technology as a comparative advantage. This will permit Illinois firms to successfully compete in today's world markets.
- C) Reporting, bookkeeping or other procedures required for compliance: Bookkeeping is required in accordance with generally accepted accounting practices.
- D) Types of professional skills necessary for compliance: Applicants would already possess the necessary skills for program compliance.

The full text of the Proposed Amendments begins on the next page:

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TITLE 14: COMMERCE
SUBTITLE C: ECONOMIC DEVELOPMENT
CHAPTER I: DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

PART 545

TECHNOLOGY ADVANCEMENT AND DEVELOPMENT ACT PROGRAMS

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AUTHORITY: Implementing and authorized by the Technology Advancement and Development Act (Ill. Rev. Stat. 198991, ch. 127, par. 3701-1 et seq.) [20 ILCS 700/1001]; and as amended by Public Act 88-453.

SOURCE: Emergency rules adopted at 13 Ill. Reg. 19753, effective December 1, 1989, for a maximum of 150 days; emergency expired April 30, 1990; adopted at 14 Ill. Reg. 9016, effective May 29, 1990; amended at 15 Ill. Reg. 15040, effective October 4, 1991, amended at 18 Ill. Reg. , effective , effective

NOTE: Capitalization denotes statutory language.

SUBPART A: TECHNOLOGY CHALLENGE GRANT PROGRAM

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Section 545.10 General Purposes of Programa) General Purposes of the Act

- 1) TO INCREASE THE LEVEL OF INVESTMENT IN RESEARCH AND DEVELOPMENT UTILIZING INDUSTRY, STATE AND LOCAL GOVERNMENT, AND LABOR AND ACADEMIA TO CREATE STATEWIDE PROGRAMS FOSTERING AN IMPROVED ENVIRONMENT FOR PRODUCTIVITY AND TECHNOLOGICAL COMPETITIVENESS.
- 2) TO UTILIZE ILLINOIS' PRESENT RESOURCES IN MANY DEVELOPING AREAS INCLUDING HEALTH CARE AND BIOMEDICAL RESEARCH, INFORMATION AND TELECOMMUNICATIONS, COMPUTING AND ELECTRONIC EQUIPMENT, MANUFACTURING, TECHNOLOGIES AND MATERIALS RESEARCH, TRANSPORTATION AND AEROSPACE, GEOSCIENCE, FINANCIAL AND SERVICE INDUSTRIES, AND AGRICULTURE AND BIOTECHNOLOGY.
- 3) TO IDENTIFY, DEVELOP AND COMMERCIALIZE TECHNOLOGY WHICH WILL PERMIT ILLINOIS FIRMS TO SUCCESSFULLY COMPETE IN TODAY'S WORLD MARKETS, AND
- 4) TO PROMOTE SYSTEMATICALLY, THOSE PRIVATE SECTOR AND NONPROFIT RESEARCH INSTITUTION EFFORTS THAT WILL CONTINUE TO INSURE ILLINOIS' ECONOMIC VITALITY AND COMPETITIVENESS. (Section 1002 of the Act)

b) General Purposes of the Technology Challenge Grant Program:

- 1) TO HELP SECURE FEDERAL RESEARCH AND DEVELOPMENT PROJECTS FOR THIS STATE, AND
- 2) TO IDENTIFY AND DEVELOP TECHNOLOGY PROGRAMS CAPABLE OF COMMERCIALIZATION. (Section 2001 of the Act)

bc) Grant Purposes

- 1) Grants shall be awarded only for the following purposes:

- 4) A) TO RESPOND TO UNIQUE, ADVANCED TECHNOLOGY PROJECTS FOR WHICH NO OTHER SOURCE OF FUNDING IS AVAILABLE AND WHICH FOSTER THE DEVELOPMENT OF ILLINOIS' ECONOMY THROUGH THE ADVANCEMENT OF THE STATE'S SCIENTIFIC AND TECHNOLOGICAL ASSETS.

- 2) TO RECOGNIZE -- TECHNOLOGY -- PROGRAMS -- OF -- EXEMPLARY -- AND OUTSTANDING RESEARCH IN THE FIELD OF SCIENCE AND TECHNOLOGY WHICH WILL BE OF BENEFIT TO ILLINOIS INDUSTRIES INCLUDING BUT NOT LIMITED TO HEALTH CARE AND BIOMEDICAL RESEARCH

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COMPUTING --- AND --- ELECTRONIC --- EQUIPMENT, --- MANUFACTURING TECHNOLOGIES --- AND --- MATERIALS --- RESEARCH, --- TRANSPORTATION --- AND AEROSPACE, --- GEOSCIENCE, --- FINANCIAL --- AND --- SERVICE --- INDUSTRIES, AGRICULTURE AND BIOTECHNOLOGY.

- 3) B) TO ASSIST ELIGIBLE APPLICANTS IN THE STATE APPLY FOR, OR QUALIFY FOR AND LEVERAGE, FEDERAL FUNDS AWARDED FOR ADVANCED TECHNOLOGY PROJECTS CONCERNING RESEARCH AND DEVELOPMENT, BUSINESS INNOVATION RESEARCH OR TECHNICAL DEVELOPMENT, OR THE TRANSFER OF USEFUL TECHNOLOGY TO THE PRIVATE SECTOR.

- 4) C) TO FUND TECHNOLOGY PARTNERSHIPS, TECHNOLOGY CONSORTIUMS OR RESEARCH CENTERS AND INDUSTRY TECHNOLOGY ASSOCIATIONS THAT ARE, OR WILL BE, ESTABLISHED TO PERFORM RESEARCH AND DEVELOPMENT IN PRESENT AND EMERGING TECHNOLOGIES THAT CAN BE DEVELOPED FOR USE BY COMMERCE AND INDUSTRY, OR TO TRANSFER TECHNOLOGY AND CONDUCT TRAINING AND INFORMATION DISSEMINATION THAT IS DIRECTLY APPLICABLE TO INDUSTRIAL COMMERCIALIZATION OF TECHNOLOGY DEVELOPMENTS.

- D) TO ASSIST IN THE NEEDS ASSESSMENT AND EVALUATION OF THE STATUS OF TECHNOLOGY IMPLEMENTATION THROUGHOUT THE STATE.

- 5) GRANTS AWARDED PURSUANT TO THIS SUBPART MAY BE USED TO HELP SUBSIDIZE EXPENSES, AS APPROVED BY THE DEPARTMENT, FOR CAPITAL IMPROVEMENTS, EQUIPMENT, CONTRACTUAL SERVICES, COMMODITIES, PERSONNEL, SUPPORT COSTS, INCLUDING TELECOMMUNICATION, ELECTRONIC DATA AND COMMODITIES, OR OTHER COSTS. (Section 2002 of the Act)

(Source: Amended at 18 Ill. Reg. _____, effective _____)

Section 545.30 Program Responsibilities

- a) The Department shall establish and administer a Technology Challenge Grant Program as provided under the provisions of the Act. The Department, in addition to those powers granted under Section 46.60 of the Civil Administrative Code of Illinois, (Ill. Rev. Stat. 1989, ch. 127, par. 46.60, as added by P.A. 86-870, effective September 8, 1989) [20 ILCS 605/46.60] is granted the powers specified in Section 1004 of the Act.

- b) Governor's Science Advisory Committee

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1) The Department and the Illinois Department of Energy and Natural Resources are hereby authorized to cooperate with and provide support to the Governor's Science Advisory Committee and the Coalition. Such support may include but not be limited to the provision of office space and may be technical, advisory or operational in nature.

2) The Committee shall be comprised of distinguished ~~scientists--and--engineers--selected--by--the--Science--and--Technology--Advisor--to--the--Governor~~ representatives from academia, business, the environmental community, scientific community and government agencies and shall be appointed by the Governor. The position and duties of the Science and Technology Advisor to the Governor, who shall also serve as chair of the committee, are described in Executive Order 89-2 Number 10 (1991).

3) The Committee shall review and evaluate all applications for grants from the Technology Challenge Grant Program. The Committee shall determine the scientific and technical merit of the proposal for which a grant is sought with respect to the purposes of the Technology Challenge Grant Program.

4) The Committee may seek evaluations from external reviewers and may form review panels, subcommittees, study groups, or task forces for purposes of conducting the review and evaluation. These review and evaluation tasks may be conducted jointly with the Coalition when the resources of the Committee are insufficient to assure a thorough review.

5) The Committee shall make a report of findings and recommendations for funding to the Director of the Department. The Committee may seek concurrence from the Coalition regarding the Committee's findings and recommendations when the resources of the Committee are insufficient to assure a thorough review.

6) The recommendations for funding made to the Director may include recommendations for multi-year commitments by the Department. All such recommendations shall be subject to availability of appropriations and all applicable law.

c) Associated Private Sector Coalition

1) A private sector coalition shall be formed in association with the Committee to advance the scientific and technological strength of Illinois by increasing publicly and privately supported research and development, and to

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improve the economic prospects of Illinois and the region. The associated private sector coalition shall be the Illinois Coalition.

2) In accordance with Section 46.60 of the Civil Administrative Code of Illinois, the Department shall cooperate with the Coalition for the purpose of administering programs to identify, develop or commercialize technology or promote private sector efforts to identify, develop or commercialize technology.

3) The Coalition shall include representatives of Illinois businesses, both large and small, representatives of labor organizations, representatives of government, representatives of institutions of higher education research including federal laboratories located in Illinois.

4) The Coalition shall review and evaluate all applications for a grant from the Technology Challenge Grant Program as presented to the Coalition by the Department. The Coalition shall determine the potential economic and commercial benefits of the proposed project to Illinois with respect to the purposes of the Technology Challenge Grant Program and the likelihood that the project for which assistance is sought will:

- A) contribute to Illinois' scientific and technological development;
- B) promote the private commercialization of new products and processes by and for Illinois businesses;
- C) establish consortia for research and development in Illinois; or
- D) increase Illinois' competitiveness for federal and private sector research and development funds.

5) The Coalition may seek evaluation of applications from external sources and may form subcommittees for the purposes of conducting the review and evaluation. The Coalition may seek concurrence from the Committee, regarding the Coalition's findings and recommendations when the resources of the Coalition are insufficient to assure a thorough review. The Coalition may conduct its review and evaluation jointly with the Committee.

6) The Coalition shall make a report of its findings and

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recommendations to the Director.

(Source: Amended at 18 Ill. Reg. _____, effective _____)

Section 545.40 Eligible Applicants

Eligible applicants shall include:

a) UNIVERSITIES, COLLEGES, COMMUNITY COLLEGES, NONPROFIT RESEARCH FOUNDATIONS OR LABORATORIES, STATE RESEARCH INSTITUTIONS, INDUSTRY TECHNOLOGY ASSOCIATIONS, OR

b) TECHNOLOGY PARTNERSHIPS OR TECHNOLOGY CONSORTIUMS ESTABLISHED BY A FORMAL JOINT PROJECT AGREEMENT BETWEEN:

- 1) TWO OR MORE PRIVATE INDUSTRIES, OR
- 2) ANY COMBINATION OF ONE OR MORE PRIVATE INDUSTRIES WITH ONE OR MORE UNIVERSITIES, COLLEGES, COMMUNITY COLLEGES, NONPROFIT RESEARCH LABORATORIES, NONPROFIT RESEARCH FOUNDATIONS, OR STATE RESEARCH INSTITUTIONS.

(Source: Amended at 18 Ill. Reg. _____, effective _____)

Section 545.50 Application Process

a) At least annually the Department shall issue a Request for Proposals (RFP) soliciting grant requests for the Technology Challenge Grant Program. The RFP shall include the deadline(s) for applications and a timeline for the applications' review and notification to the applicants. Applicants shall be notified in writing within 120 days of the application deadline.

b) Applications to the Technology Challenge Grant Program shall include:

- 1) A cover page with the title of the application; the name of the institution submitting the application; the name, address and telephone number of the individual authorized to submit the application; and if different, the name, address and telephone number of an individual qualified, willing, and available to answer questions about the application that may arise during review of the application; the amount of State funding requested; and the starting and ending dates for the proposed project.
- 2) A summary or abstract of the proposed project.

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3) The body of the application may be in whatever format the applicant believes best describes the proposed project. A text of less than ten pages is sufficient for most projects. A list of references cited and other key documents should be provided.

4) A one or two page professional resume should be provided for the proposed project manager or principal investigator.

5) Twelve complete copies of the application should be submitted to:

Director

Illinois Department of Commerce and Community Affairs
Office of Technology Advancement--and--Development and Competitiveness

State-of-Illinois--Center James R. Thompson Center

100 West Randolph Street, Suite 3-400

Chicago, Illinois 60601

Attn: Technology Challenge Fund

c) The application shall contain responses to all of the following (The Act requires that the Department consider these items in determining grant awards):

- 1) The relationship of a proposed advanced technology project to the State's future economic growth;
- 2) The qualifications and expertise of consultants, firms or organizations undertaking the effort;
- 3) The potential for leveraging federal or private research dollars, or both for the initiative;
- 4) The extent of the capacity of the applicant or the applicant partnership or consortium to finance the initiative;
- 5) The potential for adapting, commercializing or adopting the results of the applicant's project for the economic benefit of the State;
- 6) The likelihood that the project has a potential for creating new jobs or retaining current jobs in the State.
- d) All applications shall include a budget page(s) detailing the proposed use of Technology Challenge grant funds and the relationship of that requested funding to all other funds to be applied to the project.

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(Source: Amended at 18 Ill. Reg. _____, effective _____)

Section 545.60 Review of Applications

a) The Department shall receive all applications to the Technology Challenge Grant Program. The Department shall conduct an initial screening of all applications to determine the completeness of the application.

1) Applications found to be incomplete shall be returned to the applicant with notice of the deficiency. Applications which are returned may be resubmitted for consideration. ~~However--resubmitted-applications may not be considered for funding in that review cycle.~~

2) Applications determined by the Department to be substantially complete shall be forwarded within 10 working days to the Committee and the Coalition for their respective or joint review, evaluation and determination of merit.

b) The Department shall evaluate complete grant applications based upon criteria provided under the Act.

1) In determining which grant applicants shall be awarded a Technology Challenge grant, the Department shall conduct an evaluation of prior compliance with grant agreements for any grant applicant previously funded by the Department. In making this determination, the Department shall look for evidence of: consistent failure to submit required reports, failure to maintain required records, failure to protect inventory, misuse of equipment, or findings of fraud and abuse.

2) THE DEPARTMENT SHALL GIVE--EQUAL--CONSIDERATION--TO THE FOLLOWING CRITERIA IN DETERMINING GRANT AWARDS:

A) THE RELATIONSHIP OF A PROPOSED ADVANCED TECHNOLOGY PROJECT TO THE STATE'S FUTURE ECONOMIC GROWTH;

B) THE QUALIFICATIONS AND EXPERTISE OF CONSULTANTS, FIRMS OR ORGANIZATIONS UNDERTAKING THE EFFORT;

C) THE POTENTIAL FOR LEVERAGING FEDERAL OR PRIVATE RESEARCH DOLLARS, OR BOTH, FOR THE INITIATIVE;

D) THE EXTENT OF THE CAPACITY OF THE APPLICANT OR THE APPLICANT PARTNERSHIP OR CONSORTIUM TO FINANCE THE

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INITIATIVE;

E) THE POTENTIAL FOR ADAPTING, COMMERCIALIZING OR ADOPTING THE RESULTS OF THE APPLICANT'S PROJECT FOR THE ECONOMIC BENEFIT OF THE STATE; AND

F) THE LIKELIHOOD THAT THE PROJECT HAS A POTENTIAL FOR CREATING NEW JOBS OR RETAINING CURRENT JOBS IN THE STATE.

3) The Department shall forward all applications to the Committee, and the Coalition for review and recommendations for funding. The Committee and the Coalition shall review and evaluate all applications reviewed by the Department and make a report of findings and recommendations to the Director.

4) Upon receipt of the recommendations by the Committee and the Coalition, the Director shall consider those reports and the findings of the Department's evaluation. The Department shall not award any Technology Challenge grant that is not recommended for funding by the Committee or the Coalition. The Director shall determine the level of the grant award and shall determine the share of total directly attributable costs of an advanced technology project which may be considered for funding under this Subpart. Directly attributable costs are: capital improvements, equipment, contractual services, personnel, support costs, including telecommunications, electronic data processing, audits and commodities.

(Source: Amended at 18 Ill. Reg. _____, effective _____)

Section 545.70 Program Administration Requirements

a) Record Retention and Review - Grantees will, as deemed necessary by the Department, permit the Department or its representatives to have full access to and the right to examine any pertinent documents, papers, and records of the recipient involving transactions related to a grant under this program. To the extent authorized by the Freedom of Information Act (Ill. Rev. Stat. 1989, ch. 116, pars. 201 et seq., as amended by the Act) [5 ILCS 140/1], the Department will not make public any information disclosing program supported technical information if such disclosure would affect the commercialization potential of the project.

b) Financial Management Standards - A grantee's financial management

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system shall be structured to provide for accurate, current, and complete disclosure of the expenditures under the grant program. The grantee is accountable for funds received under this grant and shall maintain effective control and accountability over all funds, equipment, property, and other assets under the grant. Grantee records shall be sufficient to permit the tracking of funds to a level of expenditure adequate to ensure that funds have not been spent unlawfully.

c) Method of Compensation -

- 1) Payments pursuant to a grant are subject to the availability of funds appropriated by the General Assembly.
- 2) Payments to the grantee are subject to the initiation of an invoice voucher. The first payment for program initiation may be an advance for the first month's cash needs. Thereafter, the payments are dual purpose in that they will be sufficient to cover the expenditures to date as well as the cash needs of the recipient for the next period. Otherwise, payments may be made pursuant to the project budget and a schedule agreed to by the Department and the grantee.

- d) Audits - The grantee will conduct an audit of all appropriate program records (such as books of accounts, warrants, receipts for payment, reports of in-kind expenditures, time sheets and bank deposit slips) as required by the Department, using an independent certified public accountant, licensed by authority of the State of Illinois pursuant to the Illinois Public Accounting Act (Ill. Rev. Stat. 1989, ch. 111, pars. 5500.01 et seq.) [225 ILCS 450/0.01]. The audit must be conducted in accordance with generally accepted auditing standards adopted by the American Institute of Certified Public Accountants (AICPA) (1989) and must be submitted to the Department within six months of the expiration of the grant. If the grantee is routinely audited by the Auditor General of the State of Illinois, the grant need not be audited separately by the grantee.

- e) Suspension and Termination - If the grantee fails to comply with the terms and conditions of the Grant Award, the Department shall, after notice to the grantee, suspend the grant and withhold further payments or prohibit the grantee from incurring additional obligations of grant funds. The grant shall be reduced or terminated in the absence of full state funding; if the Department determines that the grantee has failed to comply with the terms and conditions of the grant in whole, or in part; or if the Department and the grantee agree that the continuation of the program objectives would not produce beneficial results

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commensurate with the future expenditures of funds. Grants shall be terminated for consistent failure to submit required reports, failure to maintain required records, failure to protect inventory, misuse of equipment, or findings of fraud and abuse.

- f) Nondiscrimination - The grantee shall refrain from unlawful discrimination in employment and undertake affirmative action to assure equality of employment opportunity and eliminate the effects of past discrimination in accordance with the Illinois Human Rights Act (Ill. Rev. Stat. 1989, ch. 68, pars. 1-101 et seq.) [775 ILCS 5/1-101].

- g) Complaint Process - In the case of a grantee complaint, the Department will follow the procedures outlined in 47 Ill. Adm. Code 10 (Review and Appeal Procedures).

- h) Patent and Technical Information - Grantee copyright and patent policies must provide for protection of technical information, and identify ownership and control of patents-detailed-procedures for the sale-of-licensing-of-patents-and-protect-government-use of-patented-and-copyrighted-items. The State of Illinois shall be granted a no charge license to use the technology covered by any patent for which the technology was either conceived or reduced to practice with grant funds.

- i) Publication, Promotion, and Marketing - Grantees shall provide copies of public information and promotional documents, such as program reports, annual reports, informational brochures, fact sheets, manuals, or other similar documents. In addition, all such documents, technical journals and scientific research papers resulting from grant activities must include acknowledgement of the support of the State of Illinois, Department of Commerce and Community Affairs.

- j) Administrative Costs - Only 15% of direct costs can be used as general indirect costs.

- k) Program Match - Each grantee shall be required to match Department funds, except as noted below.

- 1) Department funds shall account for no more than 50% of the project's costs. Match can include cash or in-kind contributions as well as indirect cost contributions exclusive of the 15% ceiling noted in subsection (j). Grant monies or other funds received from the federal government or from other public and private entities can be calculated as match, provided that such funds are directly related to the objectives of the project and are under the administrative control of the project director.

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- 2) The Director may waive the match requirement upon recommendation of the Committee or the Coalition. Match may be waived when it is demonstrated that no other source of funds is known or available to support the project or that the project would not go forward without the waiver. The waiver will be documented and kept on file by the Department.

- 1) Interest on Grant Funds - In accordance with Section 10 of the Illinois Grant Funds Recovery Act (Ill. Rev. Stat. 198991 Supp., ch. 127, par. 2310) [30 ILCS 705/10], all interest earned on funds held by the recipient under this grant shall become part of the grant principal when earned unless the grant agreement provides otherwise. However, any interest earned on funds subject to a Department grant after the grant's expiration date shall become part of the grant principal and shall be so treated for all purposes.

- m) Program Reports - Each grantee is required to report financial and programmatic data to the Department on a regular basis on forms prepared by the Department. Standard reports are as follows:

- 1) Expenditure Summary - The grantee shall maintain appropriate records of actual grant costs on expenditure summaries supplied by the Department. These expenditure summaries will identify line item costs charged to the grant and line item matching share supplied by the applicant or third parties. Expenditure Summaries are to be submitted to the Department by the 30th day following the end of each fiscal quarter in which any expenditure of grant funds or match funds is made.

- 2) Program Report - Each grantee shall prepare a program report. The program report shall include a narrative report on progress towards achieving objectives and activities which advance technology, leverage federal or private research dollars and activities which adapt, commercialize or adopt advanced technologies for the benefit of the State or which create or retain jobs in Illinois and economic impact of the program (Section 2003 of the Act). Program reports shall be submitted to the Department by the 30th day following the end of each fiscal quarter.

- n) Confidentiality of Trade Secrets and Commercial or Financial Information - Applications and other information obtained by the Department under the Technology Challenge Fund shall be administered pursuant to Section 7 of the Freedom of Information

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Act (Ill. Rev. Stat. 198391, ch. 116, par. 207, as amended by the Act) [5 ILCS 140/7]. Trade secrets and commercial or financial information obtained from a person or business where such trade secrets or information are proprietary, privileged or confidential, or where disclosure of such trade secrets or information may cause competitive harm including all information determined confidential under Section 4002 of the Act shall be exempt from inspection and duplication. Nothing in this subsection shall be construed to prevent a person or business from consenting to disclosure.

- o) Third Party Award Challenge - Applicants denied funds by the Department in accordance with the provisions of this Act shall not be construed to be conveyed with the right to challenge the awarding of funds by the Department to successful applicants, nor to challenge any other agreement executed in connection therewith.

(Source: Amended at 18 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Uniform Fiscal and Administrative Standards for the Job Training Partnership Act

- 2) Code Citation: 56 Ill. Adm. Code 2630

3) Section Numbers: Proposed Action:

2630.80	Amendment
2630.81	Repealed
2630.82	Amendment
2630.83	Amendment
2630.84	Repealed
2630.85	Amendment
2630.101	Repealed
2630.102	Repealed
2630.105	Amendment
2630.112	Amendment

- 4) Statutory Authority: Implementing Section 46.41 of the Civil Administrative Code of Illinois (Ill. Rev. Stat. 1991, ch. 127, par. 46.41) [20 ILCS 605/46.41] and the Job Training Partnership Act (29 U.S.C.A. 1501 et seq., revised 1990) and authorized by Section 46.40(b) of the Civil Administrative Code of Illinois (Ill. Rev. Stat. 1991, ch. 127, par. 46.40(b)) [20 ILCS 605/46.40].

- 5) A Complete Description of the Subjects and Issues Involved: On September 7, 1992, the Job Training Partnership Act (JTPA) Amendments of 1992 were signed into law. On December 29, 1992, the U.S. Department of Labor issued regulations which, for JTPA, implemented new federal standards for financial management as well as new federal cost principles. The amendments and revocations, as noted under item number three above, are as a result of the JTPA Amendments of 1992 and accompanying federal rules and regulations.

The new federal rules and regulations contain language which duplicates language as currently included in four of the sections of this Part. Hence, four sections are being repealed as noted under item three above. Also, a number of sections under this Part require amendment due to the new federal rules and regulations and are so noted above under section three as amended.

The adoption of these proposed changes will result in the revision of fiscal and administrative standards for JTPA grantees which will place the State of Illinois in compliance with the JTPA Amendments of 1992.

- 6) Will these proposed amendments replace an emergency rule currently in effect? No.

- 7) Does this rulemaking contain an automatic repeal date? No.

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- 8) Do these proposed amendments contain incorporations by reference? No.

- 9) Are there any proposed amendments pending on this Part? No.

- 10) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a state mandate as defined in Section 3(b) of the State Mandates Act (Ill. Rev. Stat. 1991, ch. 85, par. 2203) [30 ILCS 805/3].

- 11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may present their comments concerning this proposed rulemaking in writing within 45 days after this edition of the Illinois Register to the following:

Mr. E. Norman Sims, Deputy Director
Bureau of Community Development
Department of Commerce and Community Affairs
620 East Adams Street, 6th Floor
Springfield, Illinois 62701
Telephone Number: (217) 785-6174
T.D.D. Number: (217) 785-6055

- 12) Initial Regulatory Flexibility Analysis:

- A) Date rule was submitted to the Business Assistance Office of the Department of Commerce and Community Affairs: Not Applicable.

- B) Types of small businesses affected: Small businesses are not affected by these rules.

- C) Reporting, bookkeeping or other procedures required for compliance: Knowledge of accounting is required by grantee staff as well as the ability to report financial expenditure information via an electronic data processing system.

- D) Types of professional skills necessary for compliance: Grantee staff must have financial management skills.

The full text of the Proposed Amendments begins on the next page:

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TITLE 56: LABOR AND EMPLOYMENT
CHAPTER III: DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

PART 2630
UNIFORM FISCAL AND ADMINISTRATIVE STANDARDS FOR
THE JOB TRAINING PARTNERSHIP ACT

SUBPART A: INTRODUCTION

Section
2630.2 Definitions
2630.5 Incorporation by Reference

SUBPART B: ADMINISTRATIVE STANDARDS AND PROCEDURES

Section
2630.80 Program Income
2630.81 Insurance (Repealed)
2630.82 Procurement
2630.83 Property Management
2630.84 Management Systems, Reporting, and Recordkeeping (Repealed)
2630.85 Cash Management

SUBPART C: FISCAL STANDARDS AND PROCEDURES

Section
2630.100 Allowable Costs
2630.101 Classification of Costs (Repealed)
2630.102 Limitations on Certain Costs (Repealed)
2630.103 Matching Funds (Repealed)
2630.105 Fixed Unit Price Contracting

SUBPART D: COST DETERMINATION

Section
2630.110 Principles for Determining Costs
2630.111 Guidelines for Cost Allocation Plans
2630.112 Standards for Selected Items of Cost
2630.113 Indirect Cost Proposals
2630.114 Suggested Bases for Cost Distribution

SUBPART E: AUDIT

Section
2630.120 Audit Requirements
2630.121 Oversight
2630.122 Sanctions
2630.123 Federal Cognizance

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AUTHORITY: Implementing Section 46.41 of the Civil Administrative Code of Illinois (Ill. Rev. Stat. 198991, ch. 127, par. 46.41) [20 ILCS 605/46.41] and the Job Training Partnership Act (29 U.S.C.A. 1501 et seq., revised 1990) and authorized by Section 46.40(b) of the Civil Administrative Code of Illinois (Ill. Rev. Stat. 198991, ch. 127, par. 46.40(b)) [20 ILCS 605/46.40].

SOURCE: Adopted at 8 Ill. Reg. 3616, effective March 12, 1984; amended at 8 Ill. Reg. 14307, effective August 2, 1984; amended at 8 Ill. Reg. 16422, effective August 31, 1984; amended at 8 Ill. Reg. 22515, effective November 5, 1984; amended at 9 Ill. Reg. 6159, effective April 24, 1985; amended at 9 Ill. Reg. 6692, effective April 25, 1985; amended at 9 Ill. Reg. 18475, effective November 18, 1985; amended at 9 Ill. Reg. 20669, effective December 16, 1985; amended at 10 Ill. Reg. 8083, effective May 6, 1986; amended at 10 Ill. Reg. 21069, effective December 5, 1986; amended at 11 Ill. Reg. 11682, effective June 29, 1987; amended at 12 Ill. Reg. 15961, effective September 26, 1988; amended at 14 Ill. Reg. 13984, effective August 20, 1990; amended at 14 Ill. Reg. 20349, effective December 7, 1990; amended at 15 Ill. Reg. 16032, effective October 24, 1991; amended at 16 Ill. Reg. 1524, effective January 13, 1992; amended at 18 Ill. Reg. _____, effective _____.

SUBPART B: ADMINISTRATIVE STANDARDS AND PROCEDURES

Section 2630.80 Program Income

a) General: Income generated under any program and accrued interest on such program income shall be used to further the program objectives and may be retained by the grantee or returned to the State.

b) Program income may be retained by the grantee if the following conditions are met:

- 1) such program income is documented in accordance with fiscal management regulations and procedures prescribed in 56-III-Adm. Code 26107-26207 and 26307 and
- 2) the grant between the Illinois Department of Commerce and Community Affairs and the grantee does not specifically provide for program income disposition.

c) Program income must be returned to the State within thirty days of receipt if the aforementioned conditions are not met.

Program income earned on JTPA property after the funding period in which it was purchased shall be used for JTPA purposes and under the terms and conditions applicable to the use of grant funds.

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(Source: Amended at 18 Ill. Reg. _____, effective _____)

Section 2630.81 Insurance (Repealed)

- a) General: Each grantee shall follow its normal insurance procedures except as otherwise indicated in this section or except as specified in the grant.
- b) The State of Illinois assumes no liability with respect to bodily injury, illness, or any other damages or losses, or with respect to any claims arising out of any activity under a JTPA grant or agreement whether concerning persons or property in the grantee's or other subgrantee's organization or any third party.
- c) Grantees shall secure insurance coverage for injuries suffered by participants who are not covered by existing worker's compensation. Contributions to a reserve for a self-insurance program, to the extent that the type and extent of coverage and the rates and premiums would have been allowed had insurance been purchased to cover the risks, are allowable and are chargeable to participant support or training.

(Source: Repealed at 18 Ill. Reg. _____, effective _____)

Section 2630.82 Procurement

- a) Procurement Systems for State Agency Grantees and Subgrantees: State agency grantees and subgrantees shall administer procurement systems in accordance with the Standard Procurement Rules of the Department of Central Management Services (44 Ill. Adm. Code 1) for selection of JTPA providers.
- b) Procurement Systems for Non-State Agency Grantees and Subgrantees: All grantees and subgrantees shall administer procurement systems. The procurement system shall take into consideration past performance (e.g., entered employment rates, cost per placement, and ability to meet contract objectives). The procurement system may consider other criteria as determined locally. The procurement system shall include the following requirements:

1) Grantee Subrecipient/Grantor Responsibility

These standards do not relieve the grantee/subgrantee of any contractual responsibilities under its contracts. The

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grantee/subgrantee recipient is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements entered in support of an grant award. These include but are not limited to source evaluation, protests, disputes, and claims. Violations of law are to be referred to the local, State, or Federal authority having proper jurisdiction.

2) Code of Conduct

- A) Grantees/subgrantees shall maintain a written code or standards of conduct which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by Federal funds. Pursuant to Section 141(f) of the Act, no private industry council member shall participate in the selection or in the award of a contract supported by Federal funds if a conflict of interest, real or apparent, is involved. Each subrecipient shall ensure that no individual in a decisionmaking capacity including PIC members (whether compensated or not) shall engage in any activity, including participation in the selection, award, or administration of a contract supported by JTPA funds if a conflict of interest, real or apparent, would be involved. A PIC member shall not cast a vote on, nor participate in, any decisionmaking capacity on the provision of services by such member (or any organization which that member directly represents), nor on any matter which would provide any direct financial benefit to that member. Additionally, no employee, officer or agent of the grantee/subgrantee recipient, or governing body of the grantee/subgrantee recipient, shall participate in the selection, or in the award, or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, is involved. Such a conflict shall arise when the employee, officer or agent; any member of his or her immediate family; his or her partner; or an organization which employs, or is about to employ any of the previously identified, has a financial or other interest in the entity selected for an award. This provision does not prohibit a community based organization, education agency, employer, or other service provider/contractor represented by a PIC member from receiving an subgrant award for the provision of training

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and/or services to participants. However, when such a conflict of interest arises, PIC members must abstain from voting on the award-of-the-subgrant. The grantee/subrecipient is prohibited from awarding a subgrant/contract

- i) to any PIC member for performing administrative services (i.e., consultant services, accounting services, etc.); or
- ii) to any PIC member or entity with which he/she is affiliated which results in direct personal gain to the PIC member.

B) The grantee's/subgrantee's/recipient's officers, employees or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from service-providers/contractors, potential service providers/contractors (i.e., persons who perform services of type contracted for), or parties to grants.

3) Selection Procedures

A) All procurement transactions, regardless of whether by sealed bids or by negotiation and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition consistent with this Section. Procurement procedures shall not restrict or eliminate competition. Examples of what shall be considered to be restrictive of competition include, but are not limited to:

- i) placing unreasonable or different requirements on various firms in order for them to qualify for the same procurement;
- ii) noncompetitive practices between firms;
- iii) organizational conflicts of interest;
- iv) unnecessary experience and bonding requirements (i.e., requests for qualifications or experience that are not related to the services to be procured);
- v) non-competitive awards to consultants that are on retainer contracts; and

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vi) specifying only a "brand name" product instead of allowing an "equal" product to be offered and describing the performance of other relevant requirements of the procurement;

vii) overly restrictive specifications; and

viii) any arbitrary action in the procurement process.

B) The grantee/subgrantee/recipient shall have written selection procedures which shall provide, at a minimum, the following procedural requirements:

i) Solicitations of offers, whether by competitive sealed bids or competitive proposals shall incorporate a clear and accurate description of the technical requirements for the service to be procured. Such description shall not, in competitive procurements, contain features which restrict competition. The description shall include a statement of the qualitative nature of the service to be procured and set forth those standards to which the service shall conform in order to meet the program purpose. Solicitations of offers shall clearly set forth all requirements that service providers/contractors must fulfill and all other factors to be used in evaluating proposals pursuant to Section 2630.82(b)(3)(B)(ii) of this Part.

ii) Awards shall be made only to service providers/contractors that demonstrate the ability to meet objectives of the proposed procurement. Examples of how the ability to meet the procurement objectives can be demonstrated include, but are not limited to: financial resources; technical qualifications; experience; organization and facilities adequate to carry out the project; resources to meet the completion schedule contained in the contract; a satisfactory performance record for completion of contracts; and accounting and auditing procedures adequate to control property, funds and assets pursuant to Sections 2630-83(a) and (b) and 2630-84(c) through (i) of this Part.

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Awards are to be made to organizations possessing the demonstrated ability to perform successfully under the terms and conditions of the proposed contract. Such determinations shall be in writing, completed prior to the award of the contract, and take into consideration such matters as whether the organization has:

Adequate financial resources or the ability to obtain them;

Technical qualifications, experience, organization, and facilities adequate to meet the program design specifications, as well as the ability to meet the performance goals;

A satisfactory record of integrity, business ethics, and fiscal accountability;

The necessary organization, experience, and operational controls;

Accounting and auditing procedures adequate to control property, funds, and assets, pursuant to Sections 2630.83(a) and (b) and 2630.84(c) through (i) of this Part;

For Title II programs, the ability to provide services that can lead to the achievement of competency standards for participants with identified deficiencies; and

A satisfactory record of past performance (in job training, basic skills training, or related activities) which shall include, but are not limited to: demonstrated quality of training, retention in training, the ability to provide or arrange for appropriate supportive services as specified in the ISS, including child care, training completion, job placement, rates of licensure, retention in employment, and earning rates of participants.

iii) When a subrecipient determines that services will be provided by its own staff, a determination shall be made of the demonstrated performance of the staff to operate the program. This demonstration shall be in

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writing and take into consideration the matters listed in ii).

c) Grantees/subgrantees shall conduct a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis shall be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. To foster greater economy and efficiency, grantees-and subgrantees are encouraged to enter into inter-agency agreements for procurement or use of common goods and services. Grantees-and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

D) The grantees-and subgrantees shall take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps shall include:

i) placing qualified small and minority businesses and women's business enterprises on solicitation lists;

ii) assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;

iii) dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business and women's business enterprises;

iv) establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business and women's business enterprises;

v) using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

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- vi) requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in subsections(b)(3)(D)(i) through (v).

E) Contract Cost and Price

- i) Grantees--and--subgranteesSubrecipients must perform a cost or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, granteessubrecipients must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his/her estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis shall be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis shall be used in all other instances to determine the reasonableness of the proposed contract price.

- ii) JTPA procurements shall not permit excess program income (for nonprofit and governmental entities) or excess profit (for private for-profit entities). Grantees-----and subgranteesSubrecipients shall negotiate profit or program income as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit or program income, consideration shall be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and--industry profit rates in the surrounding geographical area for similar work, and market conditions in

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the surrounding geographical area.

- iii) Costs or prices based on estimated costs for contracts under-grants--shall be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with the cost principles as shown in Section 2630.110.
- iv) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.
- v) Additionally, in the case of fixed unit price/performance based contracting, all contracts must conform to the provisions of Section 2630.105.
- vi) Procurement transactions between units of state or local governments, and any other entities organized principally as the administrative entity for service delivery areas or substate areas, shall be conducted on a cost reimbursable basis.

F) Grantee/subgranteeSubrecipient contracts must contain the following provisions:

- i) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and shall provide for such sanctions and penalties as may be appropriate.
- ii) Termination for cause and for convenience by the grantee-or subgrantee-recipient, including the manner by which termination will be effected and the basis for settlement.
- iii) Compliance with federal Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in U.S. Department of Labor regulations (41 CFR 60, revised as of July 1, 1989).
- iv) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in

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Department of Labor regulations (29 CFR 3, revised as of July 1, 1989).

v) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR 5, revised as of July 1, 1989).

vi) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR 5, revised as of July 1, 1989).

vii) Notice of Departmental requirements and regulations pertaining to reporting, if any.

viii) Notice of Departmental requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

ix) Departmental requirements and regulations pertaining to copyrights and rights in data as contained in the grant agreement.

x) Access by the grantee, the subgrantee, the Labor, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records (including computer records) of the contractor which are directly pertinent to that specific contract for the purpose of making audits, examinations, excerpts, and transcriptions, and photocopies. This right also includes timely and reasonable access to contractor's and subcontractor's personnel for the purpose of interviews and discussions related to such documents.

xi) Retention of all required records for three years after grantees-or-subgrantees, recipients make final payments and all other pending matters are closed.

xii) Compliance with all applicable standards, orders, or requirements issued under Section

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306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and U.S. Environmental Protection Agency regulations (40 CFR 15, revised as of July 1, 1989).

xiii) Mandatory standards and policies relating to energy efficiency that are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163, effective December 22, 1975).

xiv) ~~grantees~~-----and-----~~subgrantees~~~~Subrecipients~~ acknowledge that receipt of funds under a contract may require compliance with Section 319 of Public Law 101-121 (31 U.S.C.A. 1352) regarding the certification and disclosure of lobbying activities with the Federal Government and agree to comply with those provisions, and all Federal rules promulgated by the Federal Grantor, which is the funding source for implementation of the Federal program; and shall require that this assurance of compliance with Federal lobbying restrictions is part of any agreement with all subrecipient~~or~~ subgrantees.

xv) ~~grantees-and-subgrantees~~~~Subrecipients~~ receiving Federal funds of \$25,000 or more must provide assurance of nondebarment, nonsuspension and other responsibility matters pursuant to Executive Order 12549 and 29 CFR 98 (as published in the May 26, 1988 Federal Register at 53 FR 19188).

xvi) Compliance with the JTPA.

xvii) Audit rights and requirements.

xviii) Payment conditions and delivery terms.

xix) Process and authority for contract changes.

xx) Provisions against assignment.

G) ~~grantees-and-subgrantees~~~~Subrecipients~~ shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or

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local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference.

- H) Grantees--and--subgranteesSubrecipients shall make available, upon request of the Department, technical or any other specifications on proposed procurements where the Department believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review may take place prior to or after the time the specification is incorporated into a solicitation document. Grantees--and--subgranteesSubrecipients must on request make available for Departmental pre-award review, procurement documents such as Requests for proposals or invitations for bids, and cost estimates.

- I) Each procurement shall clearly specify deliverables and the basis for payment.

- 4) Methods of Procurement - Procurement under grants shall be made by one of the following methods: procurement by small purchase procedures, procurement by sealed bids, procurement by competitive proposals, or procurement by noncompetitive proposals.

- A) Small purchase procedures are those relatively simple (e.g., price or rate quotations documented to the file which describe what is being procured, date provided, provider, amount and delivery date) and informal procurement methods for securing services, supplies, or other property that do not cost more than \$25,000 in the aggregate with a single vendor during a fiscal year. If small purchase procurements are used, price or rate quotations will be obtained from an adequate number of qualified sources.

- B) Sealed bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price. The sealed bid is the preferred method for procuring construction, if the conditions which follow apply. In order for sealed bids to be feasible, the following conditions should be present: a complete, adequate and realistic specification or purchase description is available; two or more responsible

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bidders are willing and able to compete effectively for the business; and the procurement lends itself to a firm-fixed-price contract and the selection of the successful bidder can be made principally on the basis of price. If sealed bids are to be used, the following requirements apply:

- i) the invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers as evidenced by documentation of an attempt to identify and obtain three bids, providing them sufficient time (a minimum of ten working days) prior to the date set for opening the bids;
 - ii) the invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;
 - iii) all bids shall be publicly opened at the time and place prescribed in the invitation for bids;
 - iv) a firm-fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts may only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
 - v) any or all bids may be rejected if there is a sound, documented reason.
- C) Procurement by competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:
- i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to

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publicized requests for proposals shall be honored to the maximum extent practical;

- ii) Proposals will be solicited from an adequate number of qualified sources;
- iii) Grantees-and-subgranteesSubrecipients will have a method for conducting technical evaluations of the proposals received and for selecting awardees;
- iv) Award will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
- v) Grantees-and-subgranteesSubrecipients may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

D) Procurement by noncompetitive proposal is procurement through solicitation of a proposal from only one source-or-PIC-approved-continuation, the funding of an unsolicited proposal, or, after solicitation of a number of sources, when competition is determined inadequate. Subrecipients shall minimize the use of sole source procurements to the extent practicable, but in every case, the use of sole source procurements shall be justified and documented.

- 1) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and one of the following circumstances applies: the item is available only from a single source; the public exigency or emergency for the requirement will not permit a delay resulting

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from competitive solicitation; the Department authorizes noncompetitive proposals; or after solicitation of a number of sources, competition is determined inadequate.

- ii) Programs-whose-funds-are-allocated-under Sections-202(a)-202(b)(2)-252(b)-and-302(d) which-are-determined-to-be-effective-by-the-PIC using---locally---developed---standards---of effectiveness---may---be---continued---by noncompetitive-proposals-if-the-PIC-reviews their-performance-and-supports-continuation-of the-grant.

- iii) Cost analysis, i.e., verifying the proposed cost data, and the evaluation of the specific elements of costs and profit, is required.

5) GranteesSubrecipients Procurement Records

GranteesSubrecipients shall maintain records which detail the history of a procurement. These records shall include, but are not necessarily limited to the following: the method of procurement, the selection of contract type, the basis for the selection or rejection of a service providercontractor, and the basis for the contract price.

- 6) All subrecipients must have protest procedures to handle and resolve disputes relating to procurements, including requirements for a protestor to exhaust all administrative remedies with the subrecipient before pursuing a protest at a higher level.

- c) Sole source awards for on-the-job training of program participants may be made, provided that an employer-employee relationship exists and that the employer will provide job training to enable the participant to perform as a regular employee of the employer's (or another employer's) establishment. When such awards are made, records of the awards shall be maintained.

- d) All grantees-and-subgranteessubrecipients shall maintain a list of potential providers/contractors who have expressed an interest, in writing, in being considered for awards. The list shall include names, addresses, and services. All potential providers/contractors who have expressed interest in being considered for awards shall be sent Requests for Proposals for the area or areas of service for which they wish to be

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considered. The list shall be considered to be public information.

- e) Classroom training, either vocational or academic, may be procured through sole source award without a cost analysis provided that:

- 1) the training is provided by an accredited or certified institution;
- 2) tuition is charged, on a per hour, per course, or per curriculum rate;
- 3) the training is the same provided to non-JTPA individuals; and
- 4) the tuition rate is listed in a course catalog and is the same as for non-JTPA individuals.

(Source: Amended at 18 Ill. Reg. _____, effective _____)

Section 2630.83 Property Management

- a) Personal and real property procured with grant funds must be used for grant purposes. Non-expendable personal property is defined as equipment or other personal property of a tangible nature having a useful life of more than one year and having an acquisition cost of \$300 or more. This definition is not meant to include equipment given to participants for use in training or use in employment upon termination from JTPA.

- b) The grantee shall maintain accountability for such property in accordance with Section 2630.84(c) and (e) of this Part.

- cb) The State shall retain title to all real and non-expendable personal property.

- d) Non-expendable personal property is defined as equipment or other personal property of a tangible nature having a useful life of more than one year and having an acquisition cost of \$100 or more.

- ec) The grantee may not purchase equipment with a unit acquisition cost greater than \$1,500 without prior written approval from the State.

- hd) Standards used in determining whether to grant approval include the necessity of such purchases to achieve program goals and the

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planned expenditure for such purposes as compared to other available prices.

- fg) All real property, and non-expendable personal property with an acquisition cost of \$300 or more, shall be maintained on the State's inventory system. Non-expendable personal property Equipment with an acquisition cost of less than \$300 shall be maintained on the grantee's inventory system.

- gf) Disposition of all real and non-expendable personal property will be per written instructions and communications received by the grantee from the Department. Disposition of equipment with an acquisition cost of less than \$300 will be disposed of at the discretion of the grantee.

- h) Standards used in determining whether to grant approval include the necessity of such purchases to achieve program goals and the planned expenditure for such purposes as compared to other available prices.

(Source: Amended at 18 Ill. Reg. _____, effective _____)

Section 2630.84 Management Systems, Reporting, and Recordkeeping (Repealed)

- a) General: Records shall be maintained by the grantee of each participant's enrollment in a JTPA program in sufficient detail to demonstrate compliance with the relevant eligibility criteria of the JTPA in titles ii and iii of the Act.

- b) Records shall be maintained by the grantee of such participant information as may be necessary to develop and measure the achievement of performance standards established by the Secretary and/or Governor in accordance with titles ii and iii of the Act.

- c) Grantees shall develop procedures for retention of all records pertinent to all subgrants, grants and agreements, including financial, statistical, property, and participant records and supporting documentation, for a period of three years from the date of obligation of funds. Records for non-expendable personal property shall be retained by the grantee for a period of three years after final disposition of the property.

- d) Grantees shall maintain the records beyond the three years if any litigation or audit is begun or if a claim is instituted involving the subgrant, grant or agreement covered by the records. In these instances, the records will be retained until the litigation, audit, or claim has been resolved.

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- e) Grantees shall be responsible for maintaining control over and accountability for all funds, property, and other assets.
- f) Grantee financial management systems shall provide for accurate, current, and complete disclosure of the financial results of each program.
- g) Grantees shall support all accounting records with source documentation e.g., invoices, receipts, and remittance advices.
- h) Grantees and subgrantees shall ensure that financial management systems allow for the determination of the reasonableness and allocability of costs in accordance with standards set forth in Subpart C of this Part.
- i) Grantees shall ensure that financial management systems shall provide that funds and assets are used solely for their intended purpose.

(Source: Repealed at 18 Ill. Reg. _____, effective _____)

Section 2630.85 Cash Management

- a) Grantees shall make all cash depositories in accounts covered under Federal Depositors Insurance Corporation or Federal Savings and Loan Insurance Corporation agreements.
- b) In the event the Department employs a letter of credit procedure, separate accounts must be used by grantees for each letter of credit.
- c) Grantees shall provide for bonding of fiscal employees for every officer, director, agent or employee who handles funds (cash, checks or other instruments of payment for program costs) under this agreement. The amount of coverage shall be the higher of: (1) \$100,000 or (2) the highest cash drawdown planned during the term of this agreement.
- d) Grantees and subgrantees other than a state entity shall account for interest earned on advances of federal funds as program income, as provided for at 20 CFR, Part 627, subpart D, paragraph 627.450.

(Source: Amended at 18 Ill. Reg. _____, effective _____)

SUBPART C: FISCAL STANDARDS AND PROCEDURES

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Section 2630.101 Classification of Costs (Repealed)

Costs shall be classified according to the provisions of federal regulations published in the Federal Register on September 22, 1989 at 54 FR 39131-39148 and codified at 20 CFR 629.6307 and 631 (April 17, 1991 edition).

(Source: Repealed at 18 Ill. Reg. _____, effective _____)

Section 2630.102 Limitations on Certain Costs (Repealed)

Grantees shall observe limitations on costs in accordance with the provisions of federal regulations published in the Federal Register on September 22, 1989 at 54 FR 39134 and codified at 20 CFR 629.39 (April 17, 1991 edition).

(Source: Repealed at 18 Ill. Reg. _____, effective _____)

Section 2630.105 Fixed Unit Price Contracting

- a) Training Activities -- Chargeable -- under -- federal -- regulations published September 22, 1989 in the Federal Register at 54 FR 39133 and codified at 20 CFR 629.38(e)(2) (April 17, 1991 edition). Fixed Unit Price/Performance Based Contracts

- 1) For the purpose of 20 CFR 629.38(e)(2), training must consist of a core of either occupational training or basic skills/remediation training, or both. Provided that core training is the primary purpose of the contract, other elements of training such as outreach, intake, skill assessment, employability development, planning, participant services, job search assistance and follow-up services are allowable. For programs authorized under the EBWAA amendments to JSPA, core training will consist of the activities authorized under Section 314(d)(1) of the Act, "retraining services", with the exclusion of out-of-area job search and relocation. Training must be geared to making the participant employment competent and must be tied to a specific or general occupational target. Job search assistance only and the types of participant intervention that do not provide core training are not acceptable for the purpose of 20 CFR 629.38(e)(2). Fixed unit price/performance based contracts are allowable provided the costs are charged to the cost category benefiting from such costs. The following requirements, as a minimum, must be met for each contract.

- 2) Fixed unit price contracts are required to outline all elements of the training package contract. Each fixed unit

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price contract must clearly list and separately price each type of training curriculum to be provided program activity included. Curricula are to be priced by type, duration, and other factors governing instructional costs, material costs, or facility costs, and each contract must specify the fixed unit price of each type of planned training. All elements constituting the training package must be clearly spelled out in the contract. This includes the course schedule for each element, the hours and/or the numbers of weeks of training, the expected number of participants who would require the element, the policy regarding non-completers and the measurable outcome. Comprehensive service contracts are acceptable as long as each sequence program activity is outlined and each training curriculum has a separate unit price. Each participant receiving service under this type of contract must receive core training. Minimally acceptable requirements for curricula and core training must be developed at the local level and each activity must be developed at the local level and identified in contracting procedures. Any program activity under the Act is allowable as a deliverable under such contracts.

- 3) Placement must be at or above the specific wage in the agreement and reflect an appropriate entry wage rate for the specific or general occupational target, given the relative skill level of trainees. Full performance for youth is attainment of one or more pre-recognized competency skill areas per the list of positive outcomes found in Section 106(b)(2) of the Act or if the training results in unsubsidized employment.

- b) Payments to Contractors Under 20-EPR-629-38(e)(2) Subrecipients Under Fixed Unit Price Contracts

- 1) When seeking reimbursements from the grantee, a subgrantee must submit the following reports:

a) A performance report which identifies the participant's name, the social security number of participants, the program activities, the benchmarks achieved and the total reimbursement claim for the performance.

b) An expenditure report which identifies the various costs and the categories to which that total claim is to be charged.

- 2) Full payment of the fixed unit price contract is made only

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upon completion of a program activity training placement in the occupation or within a general occupational target trained for, and at not less than the wage rate specified in the agreement. This wage rate shall be developed locally and reflect the appropriate entry level wage for the specific or general occupational target given the relative skill level of trainees.

- 23) Benchmark payments may be made under fixed unit price contracts only after the participant received some level of occupational or remedial core training properly documented service. The criteria required to document the attainment of such benchmarks must be specified in the contractual agreement. Payment of benchmarks may not be more than the estimated cost of the training all activity increments and the subtotal of all benchmark payments prior to placement completion of the activity, must be not more than the total costs associated with the operation of the contract.

- 3) In cases where the participants are placed successfully but do not complete training, or complete training and are placed below the specified wage level, the agreement must provide for a method to reduce the payment. Costs associated with intake, enrollment, assessment or job search activities without participation in core training are not chargeable 100 percent to the training cost category. Local contracting procedures must include methodology to determine costs budgeted to the appropriate cost categories. The payment schedule amount for any intermediate benchmark cannot be more than the estimated costs of providing that increment of the planned training.

- 4) Contracts written under the provisions of 20-EPR-629-38(e)(2) may not involve intermediary administrative agencies unless administrative costs associated with these agencies are identified and charged to the administrative cost category. On the job training agreements may be written pursuant to one general contract provided that the general contract specifies the type and duration of job to be developed and other services to be performed so that proposed costs can be fairly analyzed.

- 5) In order to qualify for provisions at 20-EPR-629-38(e)(2) as a fixed unit price contract, a minimum level of contract placement for competency attainment in the case of youth contracts performance to be attained must be specified in the contractual agreement. A level of placement for competency performance below this threshold shall

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constitute a failed contract and the costs/profits (excess revenues) attributed to the agreement must be allocated among the three cost categories. Procedures for this allocation must be established and specified in the contract agreement, and paid back to the grantee.

- 6) A significant portion of the total fixed price shall be held back until earned through placement in order to ensure the principle of contractor risk and to stimulate contractor performance to earn full payment. A hold-back level of 25 to 30 percent of the total unit price is recommended, although this amount may be adjusted to accommodate longer term and more intensive programs serving at-risk populations, recognizing the operational needs of contractors for funds.

- c) Revenue in Excess of Costs or Profits for Public or Private Non-Profit Contractors

- 1) Revenues earned by Public or private non-profit contractor sub-grantees which are in excess of costs, must be treated as program income. These funds must be used to underwrite training or training-related services consistent with the purposes of JTPA in accordance with the provisions of 627.450 of the JTPA regulations. Contractors Subrecipients must comply with accounting and recordkeeping requirements of this part so that the amount of program income accrued by the contractors can be determined. Program income must maintain its identity as JTPA funds specified in the Act and the JTPA federal regulations so that the amount of the program income can be determined.

- 2) Fixed unit price contracts must identify the estimated costs of training program activity, the amount of program income allowable, and the method of disposition of the program income. Program income recaptured by the grant recipient/grantee must follow the guidelines of Section 2630-60-627.450 of the federal JTPA regulations. Program income must be treated the same as other funds in a contractual agreement and are subject to the same audit requirements. Program income could be used to pay for required audits.

- 3) Purchases of non-expendable personal property are allowable only if agreed upon in the contract negotiations and contract budget and are specific as to amount and type of cost. As a reminder, the State retains title to all real and non-expendable personal property (section 2630-63) purchased with program income.

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- 4) For-profit subsidiaries of not-for-profit organizations which enter into agreement pursuant to 20-6FR-629-30(e)(2) the requirements of this section shall be considered wholly owned subsidiaries of and maintain the same not-for-profit status as the parent organization.

- 5) When profits/program income (or revenues in excess of costs) are earned by a contractor or service providers/subgrantee, the grantee may allow the service providers/subgrantee to retain the profits and utilize profits to further JTPA objectives in accordance with an established contract, or require that all profits/program income earned by service providers/subgrantee be returned to the grantee. Following are recordkeeping and accounting requirements for each of these options.

- A) Service Provider-Retains Profit-The grantee may allow the service provider's program income to be retained by the service providers/subgrantee. The service providers/subgrantee may use these profits to conduct additional fixed unit price contract activities or non-fixed unit price type of contracting activity in accordance with the provisions of this section, the Act and U.S. DOL regulations. 20-6FR-629-30(e)(2) and the United States Department of Labor's (BOL's) official interpretation as published in the March 13, 1999 Federal Register at 54 PR-10459-10467 or the service provider may use profits to further JTPA program objectives and expend such funds for administration, training, and/or supportive services through a line item cost reimbursement contract. If the service provider expends profits through a cost reimbursement contract, the fiscal and administrative standards for the job training Partnership Act (Sections 2630-27, 2630-62, 2630-100, 2630-101, 2630-102, 2630-110, 2630-111, 2630-112, and 2630-114) are applicable. The following provisions should be reflected in the "Assurances" section of contracts with service providers.

- i) All profits/program income must be accounted for separately, by contract, program year, and title, at the service providers/subrecipient level. At the end of the contract, the profit/program income must be reported to the grantee.

- ii) At the end of the program year, contract period, or the grantee's established close-out date, whichever is appropriate, a "contract

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close-out" showing the amount of profits program income earned must be submitted to the grantee for each contract. Subsequently, audited financial statements must be obtained by the grantee to confirm the final expenditures as reported on the close-out. The audits must be performed in accordance with "Government Auditing Standards, Standards for Audit of Governmental Organizations, Programs, Activities, and Functions" (1988 revision, issued by the Comptroller General of the United States, United States General Accounting Office and for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20401, stock number 020-000-00243-3) and the "Compliance Supplement for Single Audits of State and Local Governments" (April 1985, issued by the Executive Office of the President, OMB and for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402).

iii) Before proceeding to expend profits program income, the service-providers grantee must receive written permission from the grantee under the provisions of a contract.

iv) The profits program income may be expended by the service-providers grantee on an ongoing basis throughout the term of the original contract or in a subsequent program year in accordance with grantee policy. However, in any case, the provisions of 20 CFR, 627.450 must be met. If the service-providers grantee is allowed to expend the profits program income on an ongoing basis, the original contract must specify the scope of work to be achieved by the expenditure of the profits program income.

v) At the service-providers grantee level, GAAP fund accounting practices must be followed. Costs that benefit more than one contract (cost objective) must be allocated between the benefitting contracts according to the provisions of this Part. All costs charged against the original contract or the expenditure of the profits program income must be in accordance with the provisions of the

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Act, this Part, and applicable policies.

vi) The grantee must implement a tracking mechanism that will identify and track the amount of profits program income earned and the amounts expended by each service-providers grantee, by contract and by title.

vii) If a service-providers grantee that generated the profits program income is not selected to provide services in a subsequent program year, the unexpended profits program income must be returned to the grantee.

viii) The profits program income earned by service providers grantees on a fixed unit price contract is are not to be reported to the Department by the grantee as program income on the grant close-out report. These profits do not become part of the JTPA funds that the grantee receives from the Department. However these funds must be accounted for at the grantee and service provider level. Further, the grantee must submit a report on the expenditure of profits to the Department each year by September 30th separate from the grant close-out.

ix) All profits program income must be expended within 2 years of the program year in which it was earned. Funds not expended during this period must be returned to the Department. It is recommended that profits be expended on an accounting first in first out basis in accordance with 20 CFR 627.450 and section 165(d)(2) of the Act.

x) All non-expendable property procured with the profits program income will be JTPA property, to be tagged with Department tags, and property records must be maintained by the grantee.

xi) All participants served with the expenditure of profits program income must be tracked according to the management information system reporting requirements established by the Department.

B) Grantee-Recaptures-Profit

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The grantee may require that any profits earned by the service provider be returned to the grantee--the recapture (refund) of profits will be used to establish a "program income revolving fund" (separate from title funds)--this recapture (refund) of profits is reported to the Department on the close-out package.

i) The grantee may retain the program income for its own use or use it to support a fixed unit price or cost reimbursement contract with any service provider in accordance with guidelines in subsection (c)(5)(A)--the expenditure of program income must comply with the fiscal and administrative standards for the Job Training Partnership Act--(Sections 2630-27--2630-82, 2630-100, ---2630-101, ---2630-102, ---2630-110, 2630-111, 2630-112, and 2630-114).

ii) All profits must be accounted for separately by contract, program year, and title, at the service provider level. At the end of the contract, the program income must be returned to the grantee.

iii) At the end of the program year contract period, or the grantee's established close-out date, whichever is appropriate, a "contract close-out" showing the amount of program income earned and being returned must be submitted to the grantee for each contract. Subsequently, audited financial statements must be obtained by the grantee to confirm the final expenditure as reported on the close-out. The audit must be performed in accordance with "Government Auditing Standards" (Standards for Audit of Governmental Organizations, Programs, Activities, and Functions) (1988 revision) and the "Compliance Supplement for Single Audits of State and Local Governments" (April 1985).

iv) At the service provider level, fund accounting practices must be followed. Costs that benefit more than one contract (cost objective) must be allocated between the benefiting contracts according to the provisions of this Part. All costs charged against the original contract or the expenditure of the profits must be in accordance with the provisions of the Act, this

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Part 7--and applicable policies:

v) The grantee must implement a fund accounting tracking mechanism for the program income revolving fund that will identify and track the amount of profits returned by each service provider by contract and by title.

vi) The recaptured profits are not to be reported to the Department as program income on the grant close-out. These profits do not become part of the JPA funds that the grantee receives from the Department nor will expenditures be reduced by the amount of recaptured profits. However, these funds must be accounted for at the grantee and service provider level. Further, the grantee must submit a report on the expenditure of profits to the Department each year by September 30th separate from the grant close-out.

vii) All such program income must be spent within 2 years of the program year in which it was earned. Funds not expended during this period must be returned to the Department. It is recommended that profits be expended on an accounting first in first-out basis.

viii) All non-expendable property procured with such program income will be JPA property, to be tagged with Department tags, and property records must be maintained by the grantee.

ix) Interest earned on the program income fund may be retained by the grantee and used for corporate purposes.

x) All participants served with the expenditure of such program income must be tracked according to the MIS reporting requirements established by the Department.

eb) With regard to profits, program income or losses at a particular non-profit service provider grantee:

1) Losses incurred on one contract, may not be offset by profits from another contract, within the same title within the same program year, with approval from the grant

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recipient regardless of title.

ii) losses Program income or profits losses incurred on any contract under in a particular title program year may not be offset by profits losses or losses program income on a contract under a different title program year.

iii) losses Program income or profits losses incurred on any contract in a particular program year may not be offset by losses or profits in a different program year, except losses which are due to carry-over participants by a non-profit service provider may not be offset by losses or program income incurred by another service provider.

iv) losses or profits incurred by a non-profit service provider may not be offset by losses or profits incurred by another service provider.

v) profits earned by a non-profit service provider may be used for any JTPA authorized activity and is not restricted in its use to the same activity or contract which generated the profit. The SDA may put language into the contract document that gives service providers the authority to use the profit earned on that contract consistent with JTPA authorized activity without the service provider and the SDA having to go through a formal contract modification process.

vi) Costs that are not entirely known at contract close-out, such as audit costs and legal costs, can be paid, as governed by existing state policies related to belated costs (see Section 2630-112(a)).

vii) Profits Program income earned on all failed contracts must be returned to the SDA grantee.

(Source: Amended at 18 Ill. Reg. _____, effective _____)

Section 2630.112 Standards for Selected Items of Cost

a) Purpose and applicability.

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1) Objective. This Section provides standards for determining the allowability of selected items of cost.

2) Application. These standards will apply irrespective of whether a particular item of cost is treated as a direct or indirect cost. Failure to mention a particular item of cost in these standards is not intended to imply that it is either allowable or unallowable, rather determination of allowability in each case should be based on the treatment of standards provided in this Section for similar or related items of cost. These standards shall be applied in accordance with generally accepted accounting principles as promulgated by the Fair Accounting Standards Board, compiled and published in the Miller Comprehensive GAAP Guide, 1988, published by Miller Accounting Publications, Inc., a subsidiary of Harcourt Brace Jovanovich, Publishers, with no later amendments or editions. Any costs which were eligible for payment during the grant period but not identified until after the grant period close-out has been finalized, shall be eligible for payment by a grantee against the subsequent or current grant period budget of the same JTPA program upon written approval by the Department. In no event shall belated costs be approved unless there was an unexpended budget balance, equal to or exceeding the belated cost amount, remaining with the grant period budget under which the costs were incurred. Costs shall be recorded against the appropriate cost category and line item established under the current year budget.

3) Prior approval. In instances where prior approval of costs is required, approval will be granted if the cost is necessary, reasonable, allowable, affordable and in accordance with generally accepted accounting principles.

b) Standards for selected items of cost.

1) Accounting. The cost of establishing and maintaining accounting and other information systems required for the management of grant programs is allowable. This includes cost incurred by service agencies which establish and maintain these systems. The cost of maintaining central accounting records required for overall State or local government purposes, such as appropriate and fund accounts by the Treasurer, Comptroller, or similar officials, is allowable to the extent that the program receives coverage under such services.

2) Advertising. Advertising media includes newspapers,

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magazines, radio and television programs, direct mail, trade paper, and the like. All such advertising costs disseminating program information are allowable.

- 3) Advisory Councils. Costs incurred by State and local advisory councils, boards, or committees expending effort on behalf of grant programs are allowable. Costs of like organizations are allowable when provided for in the State grants.

- 4) Audit services. The cost of audits necessary for the administration and management of functions related to grant programs is allowable. Costs of legislative branch audit and review activity of functions related to grant programs are allowable.

- 5) Automatic data processing. The cost of data processing services to grant programs is allowable. This cost includes lease of equipment or depreciation or use allowances on grantee-owned equipment. Prior approval for the lease, lease with option-to-purchase, or purchase of equipment is required and will be granted by the Department provided the cost is allowable in accordance with Section 2630.100(a).

- 6) Bad debts. Bad debts, including losses (whether actual or estimated) arising from accounts deemed uncollectible by the grantee and other claims (e.g., internal collection costs), related collection costs (e.g., collection agency costs), and related legal costs are allowable.

- 7) Bid and proposal costs. These costs, also called preaward costs (as defined in subsection (b)(45)), are allowable only with prior approval of the Department.

- B) Bonding costs.

- A) Bonding costs arise when the Department requires assurance against financial loss to itself or others by reason of an act or default of the organization. Bonding costs arise also in instances where the organization requires similar assurance. Allowable bonding costs include such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.

- B) Costs of bonding required pursuant to the terms of a grant agreement are allowable.

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- C) Costs of bonding required by the organization in the general conduct of its operations are allowable if such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

- 9) Building lease management. Costs for lease management, review of lease proposals, and related activities are allowable.

- 10) Building space and related facilities. The cost of space in privately or publicly owned buildings used for the direct or indirect benefit of the grant program is allowable. The total cost of space, whether in a privately or publicly owned building, may not exceed the rental cost or comparable space and facilities in a privately owned building. The cost of space procured for grant program usage may not be charged to the program for periods of nonoccupancy without authorization of the Department. Instances when costs for nonoccupied space will be authorized by the Department include, but are not limited to, renovation of a facility or flood damage to building space used for purposes under the grant.

- A) Rental cost. The rental cost of space in a privately-owned building is allowable.

- B) Maintenance and operation. The costs of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, normal repairs and alterations and the like, not included in rental or other charges for space are allowable.

- C) Rearrangements and alterations. Cost incurred for rearrangement and alteration of facilities or those that increase the value or useful life of the facilities are allowable when approved by the Department.

- D) Subject to the limitations described in subsections (b)(10)(E) through (G), rental costs are allowable if the rates are reasonable in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased.

- E) Rental costs under sale and leaseback arrangements are allowable only up to the amount that would have

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been allowed had the organization continued to own the property.

F) Rental costs under less-than-arms-length leases are allowable only up to the amount that would have been allowed had title to the property vested in the organization. For this purpose, a less-than-arms-length lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to, those between divisions of an organization; between organizations under common control through common officers, directors, or members; and between an organization and a director, trustee, officer, or key employee of the organization or his immediate family either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest.

G) Rental costs under leases which create a material equity in the leased property are allowable only up to the amount that would be allowed had the organization purchased the property on the date the lease agreement was executed (e.g., depreciation or use allowances, maintenance, taxes, insurance but excluding interest expense and other unallowable costs). For this purpose, a material equity in the property exists if the lease is noncancelable or is cancelable only upon the occurrence of some remote contingency and has one or more of the following characteristics:

i) The organization has the right to purchase the property for a price which, at the beginning of the lease, appears to be substantially less than the projected fair market value at the time it is permitted to purchase the property (commonly called a lease with a bargain purchase option);

ii) Title to the property passes to the organization at some time during or after the lease period;

iii) The term of the lease (initial term plus periods covered by bargain renewal options, if any) is equal to 75 per cent or more of the economic life of the leased property; i.e., the

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period of time the property is expected to be economically usable by one or more users.

11) Central Stores. The cost of maintaining and operating a central stores organization for supplies, equipment, and materials used either directly or indirectly for grant programs is allowable.

12) Chief executive expenses. The salaries and expenses of the Office of the Governor of the State of Illinois or the chief executive of a political subdivision are not allowable. In the case of a political subdivision, expenses that are incurred solely for (and are directly and clearly identifiable as benefitting) JTPA purposes are allowable.

13) Commencement and convocation costs. Costs incurred for commencements and convocations are allocable to training agreements and are allowable.

14) Communications. Communication costs incurred for telephone calls or service, telegraph, teletype service, WATS, centrex, teipak (tie lines), postage, messenger service and similar expenses are allowable.

15) Compensation for personal services.

A) Definition. Compensation for personal services includes all compensation paid currently or accrued by the organization for services of employees rendered during the period of the grant (except as otherwise provided in subsection (b)(15)(C)). It includes, but is not limited to, salaries, wages, director's and executive committee member's fees, incentive awards, fringe benefits, pension plan costs, allowances for off-site pay differentials.

B) Allowability. Except as otherwise specifically provided in this subsection the costs of such compensation are allowable if:

i) Total compensation to individual employees is reasonable (as defined in Section 2630.100 (c)(5)) for the services rendered and conforms to the established policy of the organization consistently applied to both departmental and non-departmental activities; and

ii) Charges to grants, whether treated as direct or

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indirect costs, are determined and supported as required in this subsection.

C) Reasonableness.

i) When the organization's non-departmental activities constitute 50% or more of its total activities, compensation for employees on Department-sponsored work will be considered reasonable if it is consistent with that paid for similar work in the organization's other activities.

ii) When the organization's departmental activities constitute 50% or more of its total activities and in cases where the kind of employees required for the Government activities are not found in the organization's other activities, compensation for employees on Department-sponsored work will be considered reasonable if it is comparable to that paid for similar work in the labor markets in which the organization competes for the kind of employees involved.

D) Special considerations in determining allowability. Certain conditions require special consideration and possible limitations in determining costs under grants where amounts or types of compensation appear unreasonable. Among such conditions are the following:

i) Compensation to members of nonprofit organizations, trustees, directors, associates, officers, or the immediate families thereof. Determination shall be made by the Department when a questioned cost arises whether such compensation is reasonable for the actual personal services rendered rather than a distribution of earnings in excess of costs.

ii) Any change in an organization's compensation policy resulting in a substantial increase in the organization's level of compensation, particularly when it is concurrent with an increase in the ratio of Department grants to other activities of the organization or any change in the treatment of allowability of specific types of compensation due to changes

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in Department policy.

E) Unallowable costs. Costs which are unallowable under other subsections shall not be allowable under subsection (b)(15) solely on the basis that they constitute personal compensation.

F) Fringe benefits.

i) Fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as vacation leave, sick leave, military leave, and the like, are allowable provided such costs are absorbed by all organization activities in proportion to the relative amount of time or effort actually devoted to each activity, and are provided pursuant to a leave system.

ii) Payment of fringe benefits, in the form of employer contributions or expenses for social security, employee insurance, workers' compensation insurance, pension plan costs (see subsection (b)(15)(G)), and the like, are allowable, provided such benefits are granted in accordance with established, written organization policies. Such benefits, whether treated as indirect costs or as direct costs, shall be distributed to particular grants and other activities in a manner consistent with the pattern of benefits accruing to the individuals or group of employees whose salaries and wages are chargeable to such grants and other activities.

iii) A self-insurance fund for unemployment compensation or workers' compensation is allowable to the extent that the fund represents reasonable estimates of the organization's liability for compensation that would have been allowable had insurance been purchased to cover the risks. However, provisions for self-insured liabilities which do not become payable for more than one year after the provision is made shall not exceed the present value of the liability. Where an organization follows a consistent policy of expensing actual payments to or on behalf of employees or former employees for unemployment

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compensation or workmen's compensation, such payments are allowable in the year of payment with the prior approval of the Department provided they are allocated to all activities of the organization.

- iv) Cost of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibility is allowable only to the extent that the insurance represents additional compensation. The cost of such insurance when the organization is named as beneficiary is unallowable.

G) Pension plan costs.

- i) Costs of the organization's pension plan which are incurred in accordance with the established policies of the organization are allowable, provided: such policies meet the test of reasonableness; the methods of cost allocation are not discriminatory; the cost assigned to each fiscal year is determined in accordance with generally accepted accounting principles; the costs assigned to a given fiscal year are funded for all plan participants within six months after the end of that year. However, increases to normal and past service pension costs caused by a delay in funding the actuarial liability beyond 30 days after each quarter of the year to which such costs are assignable are unallowable.

- ii) Pension plan termination insurance premiums paid pursuant to the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001b et seq. (1990) with no later amendments or editions) are allowable. Late payment charges on such premiums are unallowable.

- iii) Excise taxes on accumulated funding deficiencies and other penalties imposed under the Employee Retirement Income Security Act are unallowable.

- H) Incentive compensation. Incentive compensation to employees based on cost reduction, or efficient performance, suggestion awards, safety awards, etc., are allowable to the extent that the overall

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compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the organization and the employees before the services are rendered, or pursuant to an established plan followed by the organization so consistently as to imply an agreement to make such payment.

- I) Overtime, extra pay shift, and multishift premiums are allowable pursuant to the grantee's personnel policies.

- J) Severance pay. See subsection (b)(57).

- K) Training and education costs. See subsection (b)(61).

- L) Support of salaries and wages.

- i) Charges to grants for salaries and wages, whether treated as direct costs or indirect costs, shall be based on documented payrolls approved by a responsible official(s) of the organization. The allocation of expenses for salaries and wages to grants must be supported by time sheets, time and attendance records or personnel activity reports as prescribed in subsection (b)(15)(i)(ii), except when a substitute system has been approved in writing by the Department.

- ii) Reports reflecting the distribution of activity of each employee must be maintained for all staff members (professionals and nonprofessionals) whose compensation is charged, in whole or in part, directly to grants. In addition, in order to support the allocation of indirect costs, such reports must also be maintained for other employees whose work involves two or more functions or activities if a distribution of their compensation between such functions or activities is needed in the determination of the organization's indirect cost rate(s) (e.g., an employee engaged part-time in indirect cost activities and part-time in a direct function). Reports maintained by nonprofit organizations to satisfy these requirements must meet the following standards: The reports must reflect

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an after-the-fact determination of the actual activity of each employee. Budget estimates (i.e., estimates determined before the services are performed) do not qualify as support for charges to grants. Each report must account for the total activity for which employees are compensated and which is required in fulfillment of their obligations to the organization. The reports must be signed by the individual employee and by a responsible supervisory official having first-hand knowledge of the activities performed by the employee stating that the distribution of activity represents a reasonable estimate of the actual work performed by the employee during the periods covered by the reports. The reports must be prepared at least monthly and must coincide with one or more pay periods.

iii) Salaries and wages of employees used in meeting cost sharing or matching requirements on grants must be supported in the same manner as salaries and wages claimed for reimbursement from the Department.

16) Contingency provisions. Contributions to a contingency reserve or any similar provision made for events which cannot be foretold with certainty as to time, intensity, or with any assurance of their happening, are unallowable. The term "contingency reserve" excludes self-insurance reserves; pension funds; and reserves for normal severance pay.

17) Contributions. Contributions and donations by the organization to others are unallowable.

18) Depreciation and use allowances.

A) Grantees may be compensated for the use of buildings, capital improvements, and equipment through use allowances or depreciation. A combination of the two methods may not be used in connection with a single class of fixed assets.

B) The computation of depreciation or use allowance will be based on acquisition cost. Where actual cost records have not been maintained, or where a recoverable disparity between the actual cost and the current fair market value exists, the current fair

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market value may be used in this computation. Fair market value can be determined by the grantee if supported by solicited bids for existing similar items. The computation will exclude the costs or any portion of the cost of buildings and equipment donated or borne directly or indirectly by the Federal Government or State of Illinois through charges to grant programs or otherwise irrespective of where title was originally vested or where it presently resides. Additionally, the computation will also exclude the cost of land. Depreciation or a use allowance on facilities in a sustained idle or excess state is not allowable, except when specifically authorized by the Department.

C) Where the depreciation method is followed, authentic property records must be maintained, and any method of calculating depreciation accepted under the Generally Accepted Accounting Principles of the American Institute of Certified Public Accountants (1983) shall be used in compiling depreciation. The method of computing depreciation must be consistently applied for any specific asset or class of assets for all affected programs and must result in equitable charges considering the extent of the use of the assets for the benefit of such programs.

D) In lieu of depreciation, a use allowance for buildings and capital improvements shall be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment (excluding items properly capitalized or building cost) will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost of usable equipment. (Note: Rates specified are effective as of start of the grantee's next fiscal year.)

E) No depreciation or use charge may be allowed on any assets that would be considered as fully depreciated, provided, however, that reasonable use charges (i.e., not exceeding six and two-thirds percent of acquisition cost for equipment and not exceeding two percent of cost for buildings) may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the effect of any increased maintenance charges or decreased efficiency due to

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age, and any other factors pertinent to the utilization of the facility or item for its original purpose. (Note: Rates specified are effective as of the start of the grantee's next fiscal year.)

- 19) Disbursing services. The cost of disbursing grant program funds by the Treasurer or other designated officer is allowable. Disbursing services cover the processing of checks or warrants, from preparation to redemption, including the necessary records or accountability and reconciliation of such records with related cash accounts.

20) Donations

A) Services received.

- i) Donated or volunteer services may be furnished to an organization by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either as a direct or indirect cost.

- ii) The value of donated services utilized in the performance of a direct cost activity shall be considered in the determination of the organization's indirect cost rate(s) and, accordingly, shall be allocated a proportionate share of applicable indirect costs when the following circumstances exist: the aggregate value of the services is material; the services are supported by 15% or more of the indirect costs incurred by the organization; and the direct cost activity is not pursued primarily for the benefit of the grant.

- iii) In those instances where there is no basis for determining the fair market value of the services rendered, the recipient and the Department shall negotiate an appropriate allocation of indirect cost to the services.

- iv) Where donated services directly benefit a project supported by a grant agreement, the indirect costs allocated to manage the services will be considered as a part of the total costs of the project. Such indirect costs may be reimbursed under the grant agreement or used to meet cost sharing or matching requirements.

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- v) The value of the donated services may be used to meet cost sharing or matching requirements. Where donated services are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

- vi) Fair market value of donated services shall be computed as follows: Rates for volunteers shall be consistent with those regular rates paid for similar work in other activities for the organization. In cases where the kinds of skills involved are not found in the other activities of the organization, the rates used shall be consistent with those paid for similar work in the labor market in which the organization competes for such skills. When an employer donates the services of an employee, those services shall be valued at the employee's regular rate of pay (exclusive of fringe benefits and indirect costs) provided the services are in the same skill for which the employee is normally paid. If the services are not in the same skill for which the employee is normally paid, fair market value shall be computed in accordance with this subsection.

B) Goods and space.

- i) Expendable donated goods, that is, expendable personal property and/or supplies, and donated use of space may be furnished to an organization. The value of the goods and space is not reimbursable either as a direct or indirect cost. Personal property is property belonging to the organization.

- ii) The value of the donations may be used to meet cost sharing or matching share requirements. The value of the donations shall be determined in accordance with subsection (b)(20)(A)(iii). Where donations are treated as indirect costs, indirect cost pools shall provide for separation of the value of the donations so reimbursement shall not be made.

- 21) Employee morale, health, and welfare costs. The costs of health or first-aid clinics and/or infirmaries,

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recreational facilities, employees' counseling services, employee information publications, and any related expenses incurred in accordance with local policy, are allowable. Income generated from any of these activities will be offset against expenses.

- 22) Entertainment costs. Costs of amusement, diversion, social activities, ceremonies, and costs relating thereto, such as meals, lodging, rentals, transportation, and gratuities are unallowable.

- 23) Equipment and other capital expenditures.

- A) As used in this subsection, the following terms have the meanings set forth below:

- i) "Equipment" means an article of nonexpendable tangible personal property having a useful life of more than one year and an acquisition cost of \$300 or more per unit. An organization may use its own definition provided that it includes all nonexpendable tangible personal property as defined herein.

- ii) "Acquisition cost" means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective transit insurance, freight, and installation, shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.

- iii) "Special purpose equipment" means equipment which is usable only for research, medical, scientific, or technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers.

- iv) "General purpose equipment" means equipment which is usable for other than research, medical, scientific, or technical activities, whether special modifications are needed to make them suitable for a particular purpose. Examples of general purpose equipment include

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office equipment and furnishings, air conditioning equipment, reproduction and printing equipment, motor vehicles, and automatic data processing equipment.

- B) Allowability

- i) Capital expenditures for general purpose equipment are unallowable as a direct cost except with the prior approval of the Department.

- ii) Capital expenditures for special purpose equipment are unallowable as direct costs except with the prior approval of the Department.

- C) Capital expenditures for land or buildings are unallowable as a direct cost except with the prior approval of the Department.

- D) Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior approval of the Department.

- E) Equipment and other capital expenditures are unallowable as indirect costs. However, see subsection (b)(18) for allowance of use allowances or depreciation on buildings, capital improvements, and equipment. Also, see subsections (b)(10)(A) and (D) through (G) for allowance of rental costs for land, buildings, and equipment.

- 24) Exhibits. Cost of exhibits relating to grantee services are allowable to the extent that grant program information is incorporated.

- 25) Fines and penalties. Costs of fines and penalties resulting from violations of, or failure of the organization to comply with, Federal, State, and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of a grant agreement or instructions in writing from the Department.

- 26) Idle facilities and idle capacity.

- A) As used in this subsection the following terms have

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the meanings set forth below:

i) "Facilities" means land and buildings or any portion thereof, equipment individually or collectively or any other tangible capital asset, wherever located, and whether owned or leased by the organization.

ii) "Idle facilities" means completely unused facilities that are excess to the organization's current needs.

iii) "Idle capacity" means the unused capacity of partially used facilities. It is the difference between that capacity that could be utilized under 100 per cent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays, and the extent to which the facility was actually used to meet demands during the accounting period. A multishift basis may be used if it can be shown that this amount of usage could normally be expected for the type of facility involved.

iv) "Costs of idle facilities or idle capacity" means costs such as maintenance repair, housing rent, and other related costs: e.g., property taxes, insurance, and depreciation or use allowances.

B) The costs of idle facilities are unallowable except to the extent that:

i) The facilities are necessary to meet fluctuations in workload; or

ii) Although not necessary to meet fluctuations in workload, the facilities were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subsection, costs of idle facilities are allowable for a period of time, not to exceed two months, depending upon the documented initiative taken to use, lease

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or dispose of such facilities.

C) The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuation of usage rates or indirect cost rates from period to period. Such costs are allowable, provided the capacity is reasonably anticipated to be necessary or was originally reasonable and is subject to reduction or elimination by subletting, renting, or sale, in accordance with sound business, economics, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be idle facilities.

27) Independent research and development. Costs for independent research and development are allowable only with prior written approval of the Department.

28) Insurance and indemnification.

A) Insurance includes insurance which the organization is required by law to carry, or which is approved by the Department, under the terms of a grant and any other insurance which the organization maintains in connection with the general conduct of its operations. This subsection does not apply to insurance which represents fringe benefits for employees.

i) Costs of insurance required by law or approved by the Department, and maintained, pursuant to a grant are allowable.

ii) Costs of other insurance maintained by the organization in connection with the general conduct of its operations are allowable subject to the following limitations: Types and extent of coverage shall be in accordance with sound business practice, and the rates and premiums shall be reasonable under the circumstances. Costs allowed for business interruption or other similar insurance shall be limited to exclude coverage of management fees. Costs of insurance or of any provisions for a reserve covering the risk of loss or damage to Department property are allowable to the extent that the organization is liable for such loss or damage. Provisions for a reserve under a

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self-insurance program are allowable to the extent that types of coverage, extent of coverage, rates and premiums would have been allowed had insurance been purchased to cover the risks. However, provision for known or reasonable estimated self-insured liabilities, which do not become payable for more than one year after the provision is made, shall not exceed the present value of the liability. Cost of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibilities are allowable only to the extent that the insurance represents additional compensation (see subsection (b)(15)). The cost of such insurance when the organization is identified as the beneficiary is allowable.

iii) Actual losses which could have been covered by insurance (through the purchase of insurance or a self-insurance program) are allowable unless expressly provided for in a grant, except: costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound business practice are allowable, and minor losses not covered by insurance, such as spoilage and breakage, which occur in the ordinary course of operations, are allowable.

B) Indemnification includes securing the organization against liabilities to third persons and any loss or damage not compensated by insurance or otherwise. The Department is obligated to indemnify the organization only to the extent expressly provided in a grant.

29) interest-and-other-financial-costs---interest-on-borrowings (however-represented);-bond-discount;-cost-of-financing and-refinancing-operations;-and-legal-and-professional-fees paid-in-connection-there-with;-are-not-allowable;-interest incurred on capital leases is allowable. A capital lease must meet at least one of the following criteria:

- 1) The lease transfers ownership of the equipment at the end of the lease period.
- 2) The lease contains a bargain purchase option.

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3) The lease term is equal to 75% or more of the estimated economic life of the leased equipment.

4) The present value of the payments at the beginning of the lease equals or exceeds 90% of the fair value of the leased property.

All other interest or financial costs are allowable unless prior written approval is given by the department.

30) Labor relations costs. Costs incurred in maintaining satisfactory relations between the institution and its employer, including costs of labor management committees, employees' publications, and other related activities, are allowable.

31) Legal expenses. The cost of legal expenses required in the administration of grant programs is allowable. Legal services furnished by the chief legal officer or staff of a State or local government, grantee, or subgrantee solely for the purpose of discharging general responsibilities as a legal officer are allowable. Legal expenses for the prosecution of claims against the Federal Government are allowable.

32) Legislative expenses. Salaries and other expenses of the State legislature or similar local governmental bodies such as county supervisor, city councils, school boards, etc., whether incurred for purpose of legislation or executive direction, are not allowable.

33) Losses on other awards. Any excess of costs over income on any award is allowable as a cost of any other award. This includes, but is not limited to, the organization's contributed portion by reason of cost sharing agreements or any underrecoveries through negotiation of lump sums for, or ceiling on, indirect costs.

34) Maintenance and Repair. Costs incurred for necessary maintenance, repair, or upkeep of property which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable.

35) Management studies. The cost of management studies to improve the effectiveness and efficiency of grant management for ongoing programs is allowable. Cost of studies performed by agencies, committees, and other organizations other than the grantee department or outside

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consultations are allowable.

- 36) Materials and supplies. The cost of materials and supplies necessary to carry out the grant programs is allowable. Purchases made specifically for the grant program should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the grantee. Withdrawals from general stores of stockrooms should be charged at cost using any method of pricing accepted under the Generally Accepted Accounting Principles of the American Institute of Certified Public Accountants (1983). Incoming transportation charges are a part of material cost.

- 37) Meetings, conferences.

A) Costs associated with the conduct of meetings, and conferences, such as the cost of renting facilities, meals, speakers' fees, and related costs are allowable.

B) To the extent these costs are identifiable with a particular cost objective, they should be charged to that objective. These costs are allowable provided they meet the general tests of allowability as provided in Section 2630.110.

C) Costs of meetings and conferences held to conduct the general administration of the organization are allowable.

- 38) Memberships, subscriptions and professional activities. The cost of membership in civic, business, technical, professional, and similar organizations is allowable. The cost of books, and subscriptions to civic, business, technical, professional, and like organization periodicals is allowable. Costs of attendance at meetings and conferences are allowable.

- 39) Motor pools. The costs of a service organization which provides vehicles to user grantee agencies and/or provides vehicle maintenance, inspection and repair services are allowable.

- 40) On-the-job training. On-the-job training (OJT) costs include salaries, wages, fringe benefits, and related costs of individuals placed in OJT programs. JTPA reimbursement limitations for costs are specified in Section 141(g) of the Act. Both grantee and employer support of such

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individuals are allowable during the period of OJT status only. Once an individual leaves OJT status, related costs are unallowable, except where grantee follow-up costs are incurred.

- 41) Organization costs. Expenditures, such as incorporation fees, brokers' fees, fees to promoters, organizers or management consultants, attorneys, accountants, or investment counselors, whether or not employees of the organization, in connection with establishment or reorganization of an organization, are unallowable except with prior approval of the Department.

- 42) Payroll preparation. The cost of preparing payrolls and maintaining necessary related wage records is allowable.

- 43) Personnel administration. Costs for the recruitment examination, certification, classification, training, establishment of pay standards, and related activities for grant programs are allowable.

- 44) Plant security costs. Necessary expenses incurred to comply with Government security requirements or for facilities protection, including wages, uniforms and equipment or personnel are allowable.

- 45) Preaward costs. Preaward costs are those incurred prior to the effective date of a grant directly pursuant to the negotiation and in anticipation of the grant where such costs are necessary to comply with the proposed delivery schedule or period of performance. Such costs are allowable only to the extent that they would have been allowable if incurred after the effective date of a grant and only with the written approval of the Department.

- 46) Printing and reproduction. Costs for printing and reproduction services including, but not limited to forms, reports, manuals, and informational literature, are allowable. Publication costs of reports or other media relating wholly or in part to grant program accomplishments or results are allowable.

- 47) Procurement services. The cost of procurement services, including solicitation of bids, preparation and award of contracts, and all phases of contract administration in providing, or displaying of goods, facilities and services for grant programs, is allowable.

- 48) Professional service costs.

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- A) Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill and who are not officers or employees of the organization, are allowable, subject to subsections (b)(48)(B), (C) and (D) when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Department.
- 8) In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors are relevant:
- i) The nature and scope of the service rendered in relation to the service required.
 - ii) The necessity of contracting for the service, considering the organization's capability in the particular area.
 - iii) The past pattern of such costs, particularly in the years prior to Department grants.
 - iv) The impact of Department grants on the organization's business (i.e., what new problems have arisen).
 - v) Whether the proportion of Department work to the organization's total business is such as to influence the organization in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Department grants and contracts.
 - vi) Whether the service can be performed more economically by direct employment rather than contracting.
 - vii) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-Department grants.
 - viii) Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, and termination provisions).

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- C) In addition to the factors in subsection (b)(48)(B), retainer fees to be allowable must be supported by documented evidence of bona-fide-services-available or-rendered-benefit to the grant to which the cost is charged. In the absence of such documentation, the payment of retainer fees shall be considered equivalent to payment to a contingency fund, which is unallowable. Additionally, the retainer fee paid must yield an equivalent benefit to the grant to which payment is charged.
- D) Cost of legal, accounting, and consulting services, and related costs incurred in connection with defense of antitrust suits, and the prosecution of claims against the Department, are unallowable. Costs of legal, accounting and consulting services, and related costs, incurred in connection with patent infringement litigation, organization and reorganization, are unallowable unless provided for in the grant agreement.
- 49) Profits and losses on disposition of depreciable property or other capital assets.
- A) Gains and losses on sale, retirement, or other disposition of depreciable property shall be included in the year in which they occur as credits or charges to cost grouping(s) in which the depreciation applicable to such property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate cost grouping(s) shall be the difference between the amount realized on the property and the undepreciated basis of the property.
- B) Gains and losses on the disposition of depreciable property shall not be recognized as a separate credit or charge under the following conditions:
- i) The gain or loss is processed through a depreciation reserve account and is reflected in the depreciation allowable under subsection (b)(18).
 - ii) The property is given in exchange as part of purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.
 - iii) A loss results from the failure to maintain

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permissible insurance, except as otherwise provided in subsection (b)(28)(A)(iii).

- iv) Compensation for the use of the property was provided through use allowances in lieu of depreciation in accordance with subsection (b)(18).

C) Gains and losses arising from mass or extraordinary sales, retirements, or other dispositions shall be considered on a case-by-case basis.

D) Gains or losses of any nature arising from the sale or exchange of property other than the property covered in subsection (b)(49)(A) shall be excluded in computing grant costs.

50) Program income. Program income constitutes revenue generated by the grantee agency as a direct result of grant program activities. Such income shall be either returned to the State or retained by the grantee to enable further program expenditures. The Department will instruct each grantee on which method shall apply either in the grant agreement or in subsequent amendments.

51) Proposal costs. Costs of preparing proposals on potential Federal and/or State grants are allowable.

52) Public information service costs. Public information service costs are allowable and include the cost associated with pamphlets, news releases, and other forms of information services. Such costs are normally incurred to:

- A) inform or instruct individuals, groups, or the general public;
- B) interest individuals or groups in participating in a service program of the organization;
- C) disseminate the results of sponsored and nonsponsored activities.

53) Rearrangement and alteration costs. Costs incurred for ordinary or normal rearrangement and alteration of facilities are allowable. Special arrangement and alteration costs incurred specifically for the project are allowable with the prior approval of the Department.

54) Reconversion costs. Costs incurred in the restoration or

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rehabilitation of the organization's facilities to approximately the same condition existing immediately prior to commencement of Department grants, fair wear and tear excepted, are allowable, with the prior approval of the Department.

55) Recruiting costs. The following recruiting costs are allowable: cost of "help wanted" advertising, operating costs of an employment office, costs of operating an educational testing program, and travel expenses including food and lodging of employees while engaged in recruiting personnel.

56) Royalties and other costs for use of patents and copyrights.

A) Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights thereto, necessary for the proper performance of the grant are allowable with prior approval of the Department unless:

- i) The Department has a license or the right to free use of the patent or copyright.
- ii) The patent or copyright has been adjudicated or administratively determined to be invalid.
- iii) The patent or copyright is unenforceable.
- iv) The patent or copyright is expired.

B) Special care shall be exercised in determining reasonableness where the royalties may have been arrived at as a result of less than arm's length bargaining; e.g.:

- i) Royalties paid to persons, including corporations, affiliated with the organization.
- ii) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Government grant would be made.

iii) Royalties paid under an agreement entered into after a grant is made to an organization.

C) In any case involving a patent or copyright formerly

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owned by the organization, the amount of royalty allowed should not exceed the cost which would have been allowed had the organization retained title thereto.

- 57) Severance pay. Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by organizations to workers whose employment is being terminated. Costs of severance pay are allowable only to the extent that in each case, it is required by law, or by the organization's written internal policy as approved by its board of directors.

58) Specialized service facilities.

- A) The costs of services provided by highly complex or specialized facilities operated by the organization, such as electronic computers, are allowable provided the charges for the services meet the conditions of either subsections (b)(58)(B) or (C) and, in addition, take into account any items of income or grant financing that qualify as credits.

- B) The costs of such services, when material, must be charged directly to applicable grants based on actual usage of the services on the basis of a schedule of rates or established methodology that

- i) does not discriminate against grant supported activities of the organization, including usage by the organization for internal purpose, and

- ii) is designed to recover only the aggregate costs of the services. The costs of each service shall consist normally of both its direct costs and its allocable share of all indirect costs. However, advance agreements made by the organization with other funding sources are considered important in evaluating special situations.

- C) Where the costs incurred for a service are not material, they may be allocated as indirect costs.

59) Taxes.

- A) In general, taxes which the organization is required to pay and which are paid or accrued in accordance with generally accepted accounting principles, and

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payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for

- i) taxes from which exemptions are available to the organization directly or which are available to the organization based on an exemption afforded the Government, and in the latter case, when the Department makes available the necessary exemption certificates,
- ii) special assessments on land which represent capital improvements, or
- iii) federal income taxes.

- B) Any refund of taxes, and any payment to the organization of interest thereon, which were allowed as grant costs, will be credited either as a cost reduction or cash refund, as appropriate, to the Department.

- 60) Termination costs. Termination of grants generally give rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the grant not been terminated. All such costs, including any costs after termination, shall be negotiated with the Department on a case by case basis, using standards found in Section 2630.110.

61) Training and education costs.

- A) Costs of preparation and maintenance of a program of instruction, including but not limited to on-the-job, classroom, and apprenticeship training designed to increase the vocational effectiveness of employees, including training materials, textbooks, salaries or wages of trainees (excluding any additional compensation, or any overtime compensation to trainees which arise therefrom), and

- i) salaries of the director of training and staff when the training program is conducted by the organization; or

- ii) tuition and fees, when the training is in an institution not operated by the organization, are allowable.

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- B) Costs of part-time education, at an undergraduate or postgraduate college level, including that provided at the organization's own facilities, are allowable only when the course or degree pursued is relative to the field in which the employee is now working and are limited to:
- i) Training materials,
 - ii) Textbooks,
 - iii) Fees charged by the educational institution,
 - iv) Tuition charged by the educational institution, or in lieu of tuition, instructor's salaries and the related share of indirect costs of the educational institution to the extent that the sum thereof is not in excess of the tuition which would have been paid to the participating educational institution,
 - v) Salaries and related costs of instructors who are employees of the organization, and
 - vi) Straight-time compensation of each employee for time spent attending classes during working hours not in excess of 158 hours per year and only to the extent that circumstances do not permit the operation of classroom or attendance at classes after regular working hours.
- C) Costs of attendance of up to 4 weeks per employee per year at a specialized program specifically designed to enhance the effectiveness of executives or managers or to prepare employees for such positions are allowable. Such costs include enrollment fees, training materials, textbooks and related charges, employees' salaries, and travel. Costs allowable under this subsection do not include those for courses that are part of a degree-oriented curriculum, which are allowable only to the extent set forth in subsection (b)(61)(B).
- D) Maintenance expense, and normal depreciation or rental, on facilities owned or leased by the organization for training purposes are allowable to the extent set forth in subsections (b)(10) and (18).

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- E) Contributions or donations to educational or training institutions, including the donation of facilities or other properties, and scholarships or fellowships, are unallowable.
- F) Training and education costs in excess of those otherwise allowable under subsections (b)(61)(B) and (C) shall be allowed if granted prior approval of the Department. To be considered for approval, the organization must demonstrate that such costs are consistently incurred pursuant to an established training and education program, and that the course or degree pursued is relative to the field in which the employee is now working.
- 62) Transportation. Costs incurred for freight, cartage, express, postage and other transportation costs relating either to goods purchased, delivered, or moved from one location to another are allowable.
- 63) Travel costs.
- A) Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the organization. Travel costs are allowable subject to subsections (b)(63)(B) through (E), when they are directly attributable to specific work under an award or are incurred in the normal course of administration of the organization. Travel status is defined by the organization's own internal personnel policies.
- B) Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used results in charges consistent with those normally allowed by the organization in its regular operations.
- C) The difference in cost between first-class air accommodations and less than first-class air accommodations is unallowable except when less than first-class air accommodations are not reasonably available to meet necessary mission requirements, such as where less than first-class accommodations would
- i) require circuitous routing,

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- ii) require travel between 7 PM and 6 AM or on weekends or holidays,
 - iii) greatly increase the duration of the flight (i.e., travel which exceeds normal travel time by three hours or longer),
 - iv) result in additional costs which would offset the transportation savings, or
 - v) offer accommodations which are contrary to those prescribed by the traveler's physician.
- D) Necessary and reasonable costs of personnel movements of a special or mass nature are allowable, subject to allocation on the basis of work or time period benefited whichever is appropriate. Advance agreements made by the organization with other funding sources are considered important in evaluating special situations.

E) Direct charges-foror indirect foreign travel costs are not allowable-only when-the-travel-has-received prior-approval-of-the-Department--Each-separate foreign-trip-must-be-approved--For-purposes-of-this provision, foreign-travel-is-defined-as-any-travel outside-of--Canada,--the--United--States--and--its territories--and--possessions,--However,--for--an organization-located-in-foreign-countries,--the-term "foreign-travel"-means-travel-outside-that-country.

64) Participant Supportive Services. Participant supportive services costs are considered allowable, only if the costs are necessary to enable an individual (enrolled for training under the Act, but who cannot afford to pay for such services) to participate in a training program funded under the Act. Payments for participant medical examinations and inoculations, when required of all students entering a training program, are appropriately charged as a direct training service or retraining cost. These payments may be charged as a supportive service cost when provided to participants on an as needed basis. Supportive services payments shall be in accordance with Section 4(24) of the Act. Payments for supportive services to Title III participants under the Act are also subject to the provisions of Section 314(c)(15) of the Act. Participant supportive service costs, in the form of payments to participant, must be supported by documentation which verifies receipt of payments to the

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participant. For the participant to receive supportive services, documentation must confirm that the participant was engaged in an activity approved by the grantee or was in an activity in compliance with a grantee policy defining excused absences, on the dates for which supportive services were made. The need for supportive service payments shall be documented in the participant's Individual Service Strategy (ISS).

65) Needs-Based Payments. Needs-based payments are limited to payments necessary for an individual to participate in a JTPA program under sections 204(c)(3), 264(d)(4) and 314(e). All payments must be in accordance with a locally developed formula and procedures which are described in the SDA's approved two year plan. Needs-based payments must be supported by documentation which indicates the need for such payment, the amount, verification that the payment was received by the participant, as well as documentation which indicates that the conditions for receiving the payments were met, as described in the participant's Individual Service Strategy (ISS). The basis for needs-based payments shall be documented in the participant's ISS, detailing the amount to be paid and the conditions under which payment is earned.

66) Incentive and Bonus Payments. Incentive and bonus payments to program participants are allowable only under Title II-C of the Act. Such payments must be paid in accordance with a locally developed policy, as described in the SDA's approved two year plan. Incentive and bonus payments must be supported by evidence that the participant met the established criteria to earn the payment, as well as verification that the payment was received by the participant.

67) Fund Raising. Fund raising is not an allowable JTPA cost without prior written approval of the department. The written request must identify the purpose, anticipated cost, the party or parties involved in the fund raising and the type of fund raising being conducted. There must be a direct benefit to the JTPA program and the fund raising activities must be charged a fair share of indirect cost and other administrative costs.

68) Stand In Costs. Stand in costs are costs paid from non-federal sources which a recipient proposes to substitute for federal costs which have been disallowed as a result of an audit or other review. In order to be considered as valid substitutions, the costs (1) must have

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been reported by the grantee as uncharged program costs under the same title and in the same year in which the disallowed costs were incurred and (2) must have been incurred in compliance with laws, regulations, and contractual provisions governing JTPA.

- 69) Profits. Commercial organizations may be allowed an amount of profit equal to no more than 12% of the total contract amount under a non-commercially available training program. The justification of the actual amount of profit allowed in a particular contract must be determined and documented in accordance with the provisions of paragraph 627.420(e)(3) of the JTPA federal regulations. The profit must be shown as a distinct reimbursement item on the contract budget. The total profit may be awarded only after the contractor has met required program performance criteria designated in the contract in support of profit earnings. All costs charged to a contract must be allowable in accordance with the Job Training Partnership Act, the Federal and State regulations and any other contractual requirements of the awarding agency.

- 70) Employment Generating Activities. Employment generating activities, economic development activities, investment in revolving loan funds, capitalization of businesses, investment in contract bidding resource centers, and similar activities are all unallowable activities.

(Source: Amended at 18 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Procedures for Gas, Electric, Water and Sanitary Sewer Utilities Governing Eligibility for Service, Deposits, Payment Practices and Discontinuance of Service
- 2) Code Citation: 83 Ill. Adm. Code 280
- 3) Section Numbers: Proposed Action:
280.50 Amendment
280.130 Amendment
- 4) Statutory Authority: Implementing Section 8-101 and authorized by Section 10-101 of the Public Utilities Act [220 ILCS 5/8-101 and 10-101].
- 5) A Complete Description of the Subjects and Issues Involved:
The proposed amendments will give the public notice of the jurisdiction of the Commission to enforce Section 15 of the Rights of Married Persons Act [750 ILCS 65/15] regarding liability for past-due utility bills. The proposed amendments are based on the decision of the First District Appellate Court in *The Peoples Gas Light and Coke Company v. Illinois Commerce Commission* (1991), 221 Ill.App.3d 738, 165 Ill.Dec. 162, in which the Court held that the Commission is authorized by Section 4-201 of the Public Utilities Act to determine the utility's rights to bill a person for outstanding bills that were incurred in the name of that person's spouse.
- The proposed amendments also make grammatical corrections or changes that are necessary to comply with the Secretary of State's rules concerning form.
- 6) Will these proposed amendments replace emergency amendments currently in effect? No.
- 7) Does this rulemaking contain an automatic repeal date? No.
- 8) Do these proposed amendments contain incorporations by reference? No.

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- 9) Are there any other proposed amendments pending on this Part? Yes.

Section Number:	Proposed Action:	Illinois Register Citation:
280.76	New Section	17 Ill. Reg. 6382

- 10) Statement of Statewide Policy Objectives: These proposed amendments neither create nor expand any state mandate on units of local government, school districts, or community college districts.

- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking:

Any person who plans to submit comments should file a notice of intent thereof, within 21 days of the date of this issue of the Illinois Register with:

Chief Clerk
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62706

Comments should be filed with the Chief Clerk within 45 days of the date of this issue of the Illinois Register.

- 12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: These proposed amendments may affect those subject public utilities that are small businesses as defined in the Illinois Administrative Procedure Act.

B) Reporting, bookkeeping or other procedures required for compliance: None.

C) Types of professional skills necessary for compliance: None.

The full text of the Proposed Amendments begins on the next page:

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TITLE 83: PUBLIC UTILITIES
CHAPTER I: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER b: PROVISIONS APPLICABLE TO MORE THAN ONE KIND OF UTILITY

PART 280

PROCEDURES FOR GAS, ELECTRIC, WATER AND SANITARY SEWER UTILITIES GOVERNING ELIGIBILITY FOR SERVICE, DEPOSITS, PAYMENT PRACTICES AND DISCONTINUANCE OF SERVICE

Section	
280.10	Policy
280.20	Scope and Application
280.30	Saving Clause
280.40	Definitions
280.50	Applicants for Service
280.60	Present Customers
280.70	Deposits
280.75	Refunds
280.80	Estimated Bills
280.90	Past Due Bills and Late Payment Charges
280.100	Unbilled Service
280.105	Treatment of Illegal Taps
280.110	Deferred Payment Agreements
280.120	Budget Payment Plan
280.130	Discontinuance of Service
280.135	Discontinuance of Service During the Period of Time from December 1 Through and Including March 31
280.138	Reconnection of Former Residential Utility Customers for the Heating Season
280.140	Discontinuance of Service to Accounts Affecting Master Metered Apartment Buildings
280.150	Service Reconnection Charge
280.160	Dispute Procedures
280.170	Commission Complaint Procedures
280.180	Public Notice of Commission Rules
280.190	Second Language Notices
280.200	Customer Information Booklet
APPENDIX A	Notice of Utility Shut Off
APPENDIX B	Requirements to Avoid Shut Off of Service in the Event of Illness
APPENDIX C	Public Notice
APPENDIX D	Insert to be Included with Each Notice of Disconnection Sent to Residential Gas and Electric Customers

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AUTHORITY: Implementing the Small Business Utility Deposit Relief Act (Ill. Rev. Stat. 1991, ch. 111 2/3, par. 1001 et seq.) [220 ILCS 351 and Sections 8-101 and 8-207 of the Public Utilities Act (Ill. Rev. Stat. 1991, ch. 111 2/3, pars. 8-101 and 8-207)] [220 ILCS 5/8-101 and 8-207], and authorized by Section 8 of the Small Business Utility Deposit Relief Act (Ill. Rev. Stat. 1991, ch. 111 2/3, par. 1008) [220 ILCS 35/8] and Sections 8-101, 8-207, and 10-101 of the Public Utilities Act (Ill. Rev. Stat. 1991, ch. 111 2/3, pars. 8-101, 8-207, and 10-101) [220 ILCS 5/8-101, 8-207, and 10-101].

SOURCE: Rule repealed, new rule adopted at 3 Ill. Reg. 1, p. 102, effective January 6, 1979; emergency amendment at 3 Ill. Reg. 46, p. 65, effective November 16, 1979, for a maximum of 150 days; amended at 4 Ill. Reg. 46, p. 1274, effective November 10, 1980; amended at 6 Ill. Reg. 10917, effective September 7, 1982; amended at 6 Ill. Reg. 13723, effective November 8, 1982; amended at 7 Ill. Reg. 9285, effective July 22, 1983; codified at 7 Ill. Reg. 13218; emergency amendment at 7 Ill. Reg. 14543, effective October 18, 1983, for a maximum of 150 days; amended at 7 Ill. Reg. 13221, effective November 1, 1983; emergency amendment at 7 Ill. Reg. 16667, effective December 1, 1983, for a maximum of 150 days; amended at 8 Ill. Reg. 3664, effective March 15, 1984; emergency amendment at 8 Ill. Reg. 17924, effective September 13, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 21222, effective October 15, 1984; amended at 9 Ill. Reg. 2268, effective February 8, 1985; amended at 16 Ill. Reg. 11023, effective July 1, 1992; amended at 17 Ill. Reg. 805, effective January 15, 1993; amended at Ill. Reg. , effective .

Section 280.50 Applicants for Service

- a) If, after a review of its own past service records, a utility finds that an applicant for residential service has failed to pay for past due utility service for the same class of service furnished to him/her at the same or at another address, a utility may refuse to provide service, unless the applicant, at the option of the utility, pays any past due bill and/or provides a deposit pursuant to Section 280.70 herein and/or enters into a deferred payment agreement pursuant to Section 280.110 herein. For purposes of this subsection, a utility may refuse to provide service if the applicant is or was the spouse of a previous customer of the utility and that previous customer incurred a past due bill for utility service that subjects the applicant to liability pursuant to Section 15 of the Rights of Married Persons Act [750 ILCS 65/15].

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- b) If, after a review of its own past service records, a utility finds that an applicant for non-residential service has failed to pay for past due utility service for the same class of service furnished to him/her at the same or at another address, or if the applicant for non-residential service is unable to establish satisfactory credit references, a utility may refuse to provide service, unless the applicant, at the option of the utility, pays any past due bill and/or provides a deposit pursuant to Section 280.70 herein and/or enters into a deferred payment agreement pursuant to Section 280.110 herein.

- c) A bill for one class of service (residential or non-residential) non-residential service shall not be transferred to a bill for the other class of residential service, and vice versa, nor shall the bill for one form of utility service (i-e, such as gas) be transferred to a bill for another form of utility service (i-e, such as electric). Service shall not be denied for nonpayment of bills for merchandise or nonutility services.

- d) If a utility takes applications for service by telephone from third parties or users who will not be the customers of the service, and if the utility does not verify the third party or user application with the customer, the utility shall not be entitled to collect from the customer of the service if the customer disclaims any responsibility for requesting the service; provided, however, that users will be responsible for paying for their use.

(Source: Amended at Ill. Reg. , effective)

Section 280.130 Discontinuance of Service

- a) Discontinuance

- 1) A utility may discontinue service when any customer fails to do any of the following:

4A) make a deposit or increase a deposit pursuant to Section 280.70 herein; or

4B) pay a past due bill owed to the utility for the same class of service furnished at the same or at another location. For purposes of

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this subsection, a utility may discontinue service if the current customer is or was the spouse of a previous customer of the utility and that previous customer incurred a past due bill for utility service that subjects the current customer to liability pursuant to Section 15 of the Rights of Married Persons Act [750 ILCS 65/15].; or

3C) comply with a an order of the Commission ruling; or

4D) make payment in accordance with the terms of a deferred payment agreement; or

5E) comply with any rules and regulations of the utility on file with the Commission for which the utility is authorized by tariff to discontinue service for noncompliance on the part of the customer or user with which the utility is authorized by tariff to discontinue service; or

6F) provide utility representatives with access to the meter after receiving consecutively estimated bills for four billing periods if billed monthly or bi-monthly or two billing periods if billed quarterly or semi-annually and the utility thereafter makes a written request for access;.

2) but only after The utility can discontinue service only after it the utility has mailed or delivered by other means a written notice of discontinuance substantially in the form of Appendix A herein. Any notice required to be delivered or mailed to a customer prior to discontinuance of service shall be delivered or mailed separately from any bill. Service shall not be discontinued until at least five days after delivery or eight days after the mailing of this notice (if mailed, eight days after mailing).

b) In addition, a copy of said notice shall be mailed to a third party designated by the customer, should the customer make a written request to the utility for such third party notice.

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c) Said notice shall remain effective for two consecutive twenty day periods, provided that during each such period a call is made at the customer's premises or billing address or telephone contact with the customer is made. If the utility does not discontinue service within the two consecutive twenty day periods, the utility shall not discontinue service until at least five days after delivery or eight days after mailing of a new notice (if mailed, eight days after mailing) of its intention to discontinue service to the customer.

d) A utility shall attempt to advise the customer that service is being discontinued by directing its employee making the disconnection to contact the customer at the time service is being discontinued. When the utility is unable to discontinue service during a call made at the customer's premise, the utility shall attempt to leave a notice at the premise or billing address informing the customer that an attempt to discontinue service has been made and that his/her service continues to be subject to discontinuance.

e) The utility shall not make a practice of delivering more than two consecutive notices of discontinuance for past due bills without engaging in collection activity with the customer.

f) A utility shall not discontinue service at the meter subsequent to 2:00 P.M. unless the utility shall be prepared to reconnect the same day at the standard reconnection charge, if any. No utility shall discontinue service on a holiday or weekend day unless prepared to reconnect on that holiday or weekend day.

g) Utility service shall not be discontinued and shall be restored if discontinued where a customer has established, renegotiated, or is reinstated onto a deferred payment agreement pursuant to Section 280.110 herein and has not defaulted on such agreement.

h) Utility service shall not be discontinued and shall be restored if discontinued for the reason which is the subject of a dispute or complaint during the pendency of procedures under Section 280.160 and/or Section 280.170 herein where the customer has complied with such Sections are complied with.

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i) Termination of gas and electric utility service to all residential users, including all tenants of apartment buildings, for nonpayment of bills where gas or electricity is used as the only source of space heating or to control or operate the only space heating equipment at the residence is prohibited⁷⁻¹

1) on any day when the National Weather Service forecast for the following 24 hours covering the area of the utility in which the residence is located includes a forecast that the temperature will be 32 degrees Fahrenheit or below; or

2) on any day preceding a holiday or a weekend when such a forecast indicated that the temperature will be 32 degrees Fahrenheit or below during the holiday or weekend.

j) Notwithstanding any of the foregoing provisions, discontinuance of service to residential customers is prohibited for up to sixty days when discontinuance of service will aggravate an existing serious illness of any person who is a permanent resident of the premises where service is rendered if the customer complies with the following requirements regarding such illness⁷⁻¹

*1) The illness must be certified to the utility by a registered physician or local board of health. The certification shall be in writing and shall include the name of the ill person, a statement that he/she is a resident of the premises in question, the name, business address, and telephone number of the certifying party, the nature of the illness, and the period of time during which termination will aggravate the illness⁷⁻¹

†2) Initial certification by the certifying party may be by telephone if written certification is forwarded to the utility within five days⁷⁻¹

#3) Initial certification shall prohibit discontinuance of service for thirty days. Certification may be renewed by the customer for an additional thirty days by providing another certificate to the utility. Failure to so renew the certificate shall entitle the utility to initiate discontinuance procedures⁷⁻¹

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#4) The customer must enter into an agreement for the retirement of the unpaid balance of the account within the first thirty days and keep the current account paid during the period that the unpaid balance is to be retired. Notice of discontinuance of service sent to residential customers must include a notice substantially in the form of Appendix B herein⁷⁻¹ and

o5) In the event service is terminated within fourteen days prior to certification of illness by or for a qualifying resident, service shall be restored to that residence if a proper certification is thereafter made in accordance with the foregoing provisions.

pk) Nothing in this Section or this Part shall be construed to prevent discontinuance of service for reasons of safety, health, or cooperation with civil authorities.

(Source: Amended at Ill. Reg. , effective)

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- 1) Heading of the Part: Procedures Governing the Establishment of Credit, Billing, Deposits, Termination of Service and Issuance of Telephone Directories for Telephone Utilities in the State of Illinois
- 2) Code Citation: 83 Ill. Adm. Code 735
- 3) Section Numbers: Proposed Action:
735.100 Amendment
735.130 Amendment
- 4) Statutory Authority: Implementing Section 8-101 and authorized by Section 10-101 of the Public Utilities Act [220 ILCS 5/8-101 and 10-101].

5) A Complete Description of the Subjects and Issues Involved:
The proposed amendments will give the public notice of the jurisdiction of the Commission to enforce Section 15 of the Rights of Married Persons Act [750 ILCS 65/15] regarding liability for past-due utility bills. The proposed amendments are based on the decision of the First District Appellate Court in *The Peoples Gas Light and Coke Company v. Illinois Commerce Commission* (1991), 221 Ill.App.3d 738, 165 Ill.Dec. 162, in which the Court held that the Commission is authorized by Section 4-201 of the Public Utilities Act to determine the utility's rights to bill a person for outstanding bills that were incurred in the name of that person's spouse.

The proposed amendments also make grammatical corrections or changes that are necessary to comply with the Secretary of State's rules concerning form.

- 6) Will these proposed amendments replace emergency amendments currently in effect? No.
- 7) Does this rulemaking contain an automatic repeal date? No.
- 8) Do these proposed amendments contain incorporations by reference? No.

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- 9) Are there any other proposed amendments pending on this Part? Yes.

Section Number:	Proposed Action:	Illinois Register Citation
735.70	Amendment	17 Ill. Reg. 12483
735.121	New Section	17 Ill. Reg. 6386

10) Statement of Statewide Policy Objectives: These proposed amendments neither create nor expand any state mandate on units of local government, school districts, or community college districts.

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking:

Any person who plans to submit comments should file a notice of intent thereof, within 21 days of the date of this issue of the Illinois Register with:

Chief Clerk
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62706

Comments should be filed with the Chief Clerk within 45 days of the date of this issue of the Illinois Register.

12) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not for profit corporations affected: These proposed amendments may affect those subject local exchange carriers that are also small businesses as defined in the Illinois Administrative Procedure Act.
- B) Reporting, bookkeeping or other procedures required for compliance: None.
- C) Types of professional skills necessary for compliance: None.

The full text of the Proposed Amendments begins on the next page:

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NOTICE OF PROPOSED AMENDMENTS

TITLE 83: PUBLIC UTILITIES
CHAPTER I: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER f: TELEPHONE UTILITIES

PART 735

PROCEDURES GOVERNING THE ESTABLISHMENT OF CREDIT, BILLING,
DEPOSITS, TERMINATION OF SERVICE AND ISSUANCE OF TELEPHONE
DIRECTORIES FOR TELEPHONE UTILITIES IN THE STATE OF ILLINOIS
(GENERAL ORDER 219)

Section	
735.10	Definitions
735.20	Policy
735.30	Scope and Application
735.40	Discrimination Prohibited
735.50	Variance
735.60	Saving Clause
735.70	Customer Billings
735.80	Deferred Payment Agreements
735.90	Preferred Payment Dates
735.100	Applicants for Service
735.110	Present Customers
735.120	Deposits
735.130	Discontinuance or Refusal of Service
735.140	Illness Provision
735.150	Payment for Service
735.160	Past Due Bills
735.170	Service Restoral Charge
735.180	Directorates
735.190	Dispute Procedures
735.200	Commission Complaint Procedures
735.210	Public Notice of Commission Rules
735.220	Second Language
735.230	Customer Information Booklet
APPENDIX A	Notice of Discontinuance of Service
APPENDIX B	Requirements to Avoid Shutoff of Service in the Event of Illness
APPENDIX C	Public Notice Concerning Availability of this Part

AUTHORITY: Implementing Sections 32, 39, and 41 8-101 and 9-252 and authorized by Section 10-101 of "AN ACT concerning public utilities" the Public Utilities Act (Ill. Rev. Stat. 1981, ch. 111 2/3, pars. 32, 39, 41 and 8-101, 9-252, and 10-101) [220 ILCS 5/8-101, 9-252, and 10-101].

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SOURCE: Adopted at 7 Ill. Reg. 2108, effective February 4, 1983; codified at 7 Ill. Reg. 15969; emergency amendment at 7 Ill. Reg. 16055, effective November 17, 1983, for a maximum of 150 days; amended at 8 Ill. Reg. 5161, effective April 13, 1984; amended at Ill. Reg. , effective .

Section 735.100 Applicants for Service

- a) Where a company's tariff provides for various types of service in an exchange, the applicant shall be advised of the one-party service with the lowest basic monthly service charge and lowest monthly charge for leased equipment or the lowest purchase price for company-marketed equipment for the type of service (business or residential) requested.
- b) As a part of the first bill rendered for utility service to a new residential or single-line business customer, a company shall provide the customer with a listing of all services and leased telephone equipment which shall be provided to that customer, with an itemization of the monthly charges applicable thereto. The first bill shall also show the lowest basic local service charge available for the type of service supplied. If the customer notifies the company within 20 days after receiving their his/her first bill that the customer does not desire to receive certain services or equipment, the company will delete such services or equipment from the customer's account. The customer shall be responsible for all monthly usage and installation charges incurred for the use of such service and equipment. ~~However,~~ ^{no} company, however, shall charge a record keeping or service ordering charge for such deletion or change.
- c) A company shall establish a written procedure governing requirements for establishment of credit.
- d) A company shall provide a listing of acceptable credit information, pursuant to its tariffs, to each applicant for service who is required to furnish credit information. This listing shall indicate the order of preference of this information, if any, and shall indicate what information that particular applicant must furnish in order to obtain service.

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e) Credit information

1) If an applicant for service is unable to provide satisfactory credit information, the company may refuse to provide service unless the applicant furnished a deposit, pursuant to section 735.120 herein.

2) For residential applicants for service, satisfactory credit shall be based upon the following standards:

A) If the applicant has verifiable previous service with any telephone company for at least twelve months and the payment record on the account was satisfactory, the applicant would obtain service without a deposit.

B) If the applicant had not paid for the previous service, or the previous service had been disconnected for nonpayment within the past twelve months, the company may require a deposit prior to the connection of telephone service.

C) If the applicant does not have verifiable service, or if the applicant had previous service for less than one year, the applicant would be requested to provide further credit information. The applicant would be requested to provide proof of:

- i) home ownership;
- ii) employment of two years or more with the current employer;
- iii) major oil company credit card;
- iv) major credit card;
- v) checking account;
- vi) savings account;
- vii) age of 50 years or more.

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3) If the applicant is unable to provide affirmative responses to two of these credit criteria in subsection (e)(2) above, the company may request the applicant to furnish a deposit prior to the connection of telephone service.

34) For business customers, each company shall submit to the Commission a credit evaluation plan. In evaluating the company's credit evaluation plan the Commission will take into consideration whether the plan establishes reasonable criteria in relation to the risks the company might expect to experience from business customers, whether the criteria can be determined by objective, rather than subjective standards, and whether the criteria do not unreasonably discriminate against any class or group of commercial customers.

f) If a company finds that the applicant for service has failed to pay for past due telephone service of the same class provided by any telephone company, the company may refuse to provide service unless the applicant, at the option of the company, pays any past due bill and/or furnishes a deposit pursuant to section 735.120 herein. For purposes of this subsection, a company may refuse to provide service if the applicant is or was the spouse of a previous customer of a telephone company and that previous customer incurred a past due bill for telephone service that subjects the applicant to liability pursuant to Section 15 of the Rights of Married Persons Act [750 ILCS 65/15].

g) If verification of the applicant's credit is required, the company shall provide service if the applicant furnishes advance payment of both the applicable charges for connecting service and the estimated charges for the first 30 days of service. If the verification of credit provides unsatisfactory credit information, the applicant will be informed of the reason or reasons, after which the company may refuse to provide or continue service until the customer provides a deposit or guarantor, pursuant to Section 735.120. If the applicant so requests, the company shall provide these reasons in writing to the applicant.

h) When the company takes applications by telephone from third parties or users who will not be the customers of the service, and the company does not verify the third

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party or user application with the customer, the company shall not be entitled to collect from the customer of the service if the customer disclaims any responsibility for requesting the service within 20 days from the date of mailing of the first bill; provided, however, that users will be responsible for paying for any message unit or toll charges which accrue to the account.

(Source: Amended at Ill. Reg. , effective)

Section 735.130 Discontinuance or Refusal of Service

a) The company may discontinue or refuse service for any of the reasons stated below:

- 1) For failure to make or increase a deposit pursuant to Sections 735.100, 735.110, and 735.120 herein;
- 2) For failure to pay a past due bill owed to the company, including one for the same class of service furnished to the applicant or customer at the same or another location, or where the applicant or customer voluntarily assumed, in writing, responsibility for the bills of another applicant or customer. For purposes of this subsection, a company may refuse to provide service if the current customer or applicant is or was the spouse of a previous customer of the company and the previous customer incurred a past due bill for telephone service that subjects the current customer or applicant to liability pursuant to Section 15 of the Rights of Married Persons Act [750 ILCS 65/15];

3) For failure to provide company representatives with necessary access to company-owned service equipment, after the company has made a written request to do so;

4) For failure to make payment in accordance with the terms of a deferred payment arrangement;

5) When a company has reason to believe that a customer has used a device or scheme to obtain service without payment and where the company has so notified the customer prior to disconnection;

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6) For violation of or noncompliance with a Commission order;

7) For violation of or noncompliance with any rules and regulations of the company on file with the Commission for which the company is authorized by tariff to discontinue service for violation of or noncompliance with on the part of the customer or user ~~the company is authorized by tariff to deny or refuse service;~~

8) For violation of or noncompliance with municipal ordinances and/or other laws pertaining to telephone service; or

9) Without notice in the event that the customer's use of equipment adversely affects the company's service to others. This disconnection may be done without notice to the customer or user.

b) The following shall not constitute sufficient cause for discontinuance or refusal of service:

1) Except as specified in subsection (a)(2) above, failure to pay the past due bill of a previous customer of the premises to be served, unless the applicant for service voluntarily signed a form agreeing to assume responsibility for the bills of the previous customer, or the previous customer is currently a member of the same household as the applicant;

2) Failure to pay charges for directory advertising;

3) Failure to pay the past due bill for a different class of service (residence residential or business); or

4) Failure to pay charges for terminal equipment or other telephone equipment purchased from the company, an affiliate, or a subsidiary.

c) Discontinuance procedures

1) The company may discontinue service to a customer only after it has mailed or delivered by other means a written notice of discontinuance, substantially in the form of Appendix A. Service shall

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not be discontinued until at least five (5) days after delivery of this notice or eight days after the postmark date on a mailed notice. ~~(if mailed, eight (8) days after postmark on notice).~~ The Notice of discontinuance shall be delivered separately from any other written matter or bill.

2) Notice of discontinuance shall not be mailed before the third business day following the due date shown on the bill.

d) Said notice shall remain in effect for ~~twenty (20)~~ days beyond the date of discontinuance shown on the notice. The company shall not discontinue service beyond the ~~twenty (20)~~ day period until at least five (5) days after delivery of a new written notice of discontinuance or ~~eight days after the postmark on a mailed notice (if mailed, 8 days after postmark on the notice).~~

e) In addition to the written notice, the company shall attempt to advise the customer when service is scheduled for discontinuance. The company shall not deliver more than two (2) consecutive notices of discontinuance for past due bill without engaging in collection activity with the customer.

f) Timing of the discontinuance

1) Service shall not be discontinued for a past due bill after 12 noon on a day before or on any Saturday, Sunday, legal holiday recognized by the State of Illinois, or any day when the utility's business offices are not open for business. Services may be discontinued only between the hours of 8 a.m. and 2 p.m., unless the company is prepared to restore service within three hours after receipt of payment, at the standard restoral charge, if any.

2) Each company shall have personnel available until at least 5 p.m. on business days authorized to reconnect service if the conditions cited as grounds for discontinuance are corrected and any restoral charge specified by the company's tariff is paid.

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g) Service shall not be discontinued, and shall be restored if discontinued, where a present customer who is indebted to the company enters into a payment arrangement pursuant to Section 735.80 ~~of this Part~~, and complies with the terms thereof.

h) Service shall not be discontinued, and shall be restored if discontinued, for any reason which is the subject of a dispute or complaint ~~while that dispute or complaint~~ pursuant to Section 735.190 and/or 735.200 ~~herein is~~ while such dispute or complaint is pending and the complainant has complied with the provisions of these ~~Sections such Sections are complied with.~~

i) Service shall not be discontinued for an amount due the company which has not been included in a discontinuance notice.

j) Nothing in this Section shall be construed to prevent immediate discontinuance of service without notice or the refusal of service for reasons of public safety or health.

(Source: Amended at Ill. Reg. , effective)

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- 1) Heading of the Part: Uniform System of Accounts for Electric Utilities
- 2) Code Citation: 83 Ill. Adm. Code 415
- 3) Section Numbers:
- | | |
|----------|-------------------------|
| | <u>Proposed Action:</u> |
| 415.10 | Amendment |
| 415.20 | Amendment |
| 415.210 | Amendment |
| 415.250 | Amendment |
| 415.270 | Repeal |
| 415.280 | Repeal |
| 415.420 | Repeal |
| 415.430 | Amendment |
| 415.450 | Repeal |
| 415.1020 | Repeal |
| 415.1080 | Repeal |
| 415.2010 | New Section |
| 415.2070 | New Section |
| 415.2110 | New Section |
| 415.2140 | New Section |
| 415.4390 | Amendment |
- 4) Statutory Authority: Implementing Sections 5-102 and 5-103 and authorized by Section 10-101 of the Public Utilities Act [220 ILCS 5/5-102, 5-103, and 10-101].
- 5) A Complete Description of the Subjects and Issues Involved:
The proposed amendments update the Commission's incorporation by reference of the Federal system of accounts and bring the Commission's rules into conformance with recent Federal Energy Regulatory Commission amendments. The proposed amendments also reflect the position of "Director of Accounting" within the Commission.
- 6) Will these proposed amendments replace emergency amendments currently in effect? No.
- 7) Does this rulemaking contain an automatic repeal date? No.
- 8) Do these proposed amendments contain incorporations by reference? Yes.
- 9) Are there any other proposed amendments pending on this Part? No.

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- 10) Statement of Statewide Policy Objectives: These proposed amendments neither create nor expand any state mandate on units of local government, school districts, or community college districts.
- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking:
Any person who plans to submit comments should file a notice of intent thereof, within 21 days of the date of this issue of the Illinois Register with:

Chief Clerk
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62706

Comments should be filed with the Chief Clerk within 45 days of the date of this issue of the Illinois Register.
- 12) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: These proposed amendments will not affect any small businesses, small municipalities, or not-for-profit corporations.
- B) Reporting, bookkeeping or other procedures required for compliance: Bookkeeping
- C) Types of professional skills necessary for compliance: Accounting

The full text of the Proposed Amendments begins on the next page:

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NOTICE OF PROPOSED AMENDMENTS

TITLE 83: PUBLIC UTILITIES
 CHAPTER I: ILLINOIS COMMERCE COMMISSION
 SUBCHAPTER c: ELECTRIC UTILITIES

PART 415

UNIFORM SYSTEM OF ACCOUNTS FOR ELECTRIC UTILITIES

SUBPART A: GENERAL PROVISIONS AND ADOPTION OF
 CFR PROVISIONS BY REFERENCE

Section
 415.10 Adoption of 18 CFR 101 by Reference
 415.20 Adoption of 18 CFR 116 by Reference

SUBPART B: ADDITIONS TO AND DELETIONS FROM CFR PROVISIONS

Section
 415.200 Definitions
 415.210 General Instruction 1
 415.210 General Instruction 5
 415.250 General Instruction 7 (Repealed)
 415.280 General Instruction 7.1 (Repealed)
 415.330 General Instruction 12 (Repealed)
 415.340 General Instruction 13
 415.380 General Instruction 17
 415.390 General Instruction 18
 415.410 General Instruction 20
 415.420 Electric Plant Instruction 2 (Repealed)
 415.430 Electric Plant Instruction 3
 415.450 Electric Plant Instruction 5 (Repealed)
 415.470 Electric Plant Instruction 7
 415.500 Electric Plant Instruction 10
 415.940 Income Chart of Accounts
 415.970 Operation and Maintenance Expense Chart of Accounts
 415.1020 Account 102 (Repealed)
 415.1050 Account 105
 415.1080 Account 108 (Repealed)
 415.2010 Accounts 201, 202, 203, and 204
 415.2070 Account 207
 415.2110 Account 211
 415.2140 Account 214
 415.4160 Account 416
 415.4261 Account 426.1
 415.4390 Account 439
 415.5180 Account 518
 415.9140 Accounts 914 and 915
 415.9302 Account 930.2

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APPENDIX G Operation and Maintenance Expense Accounts
 EXHIBIT A Accounts 914 and 915

AUTHORITY: Implementing Sections 5-102 and 5-103 and authorized by Section 10-101 of The Public Utilities Act (Ill. Rev. Stat. 1987 1991, ch. 111 2/3, pars. 5-102, 5-103 and 10-101) [220 ILCS 5/5-102, 5-103 and 10-101].

SOURCE: Adopted July 14, 1960, effective January 1, 1962; old rules repealed, new rules adopted and codified at 8 Ill. Reg. 160, effective January 1, 1984; amended at 9 Ill. Reg. 4016, effective April 1, 1985; amended at 9 Ill. Reg. 13079, effective August 15, 1985; amended at 12 Ill. Reg. 11710, effective July 15, 1988; amended at Ill. Reg. , effective

SUBPART A: GENERAL PROVISIONS AND ADOPTION OF
 CFR PROVISIONS BY REFERENCE

Section 415.10 Adoption of 18 CFR 101 by Reference

The Illinois Commerce Commission ("Commission") adopts 18 CFR 101, as of February 12, 1985 April 1, 1993, as its uniform system of accounts for electric utilities, subject to the exceptions set forth in Section 415.200 et seq. of this Part. No incorporation in this Part includes any later amendment or edition.

(Source: Amended at Ill. Reg. , effective)

Section 415.20 Adoption of 18 CFR 116 by Reference

The Illinois Commerce Commission adopts 18 CFR 116, as of January 1, 1988 April 1, 1993, as its prescription of units of property for use in accounting for additions to and retirements of electric plant. No incorporation in this Part includes any later amendment or edition.

(Source: Amended at Ill. Reg. , effective)

SUBPART B: ADDITIONS TO AND DELETIONS FROM CFR PROVISIONS

Section 415.210 General Instruction 1

General Instruction 1, "Classification of Utilities," is deleted and replaced by the following:

"A. This system of accounts applies to all utilities; provided, however, if in the opinion of any utility having annual operating revenues of less than

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\$10,000,000, this system of accounts should prove to be unduly burdensome, such utility may, with the approval of the ~~Chief Accountant~~ Director of Accounting of the Commission, group or combine certain accounts herein in order that the accounting requirements for small utilities may conform more nearly to the nature and volume of business transacted. Requests to group or combine accounts shall be made in writing, including a statement of the proposed modifications. In determining whether this system of accounts is unduly burdensome with respect to a utility, the ~~Chief Accountant~~ Director of Accounting shall consider, among other things, whether compliance will require additional personnel or additional office equipment, such as electronic data processing equipment. The ~~Chief Accountant~~ Director of Accounting shall make this determination within six months of receiving the written request. Having obtained such approval, the utility shall continue to use the system as modified on a consistent basis.

B. For purposes of implementation, all electric utilities subject to Illinois Commerce Commission jurisdiction shall be regarded as "major" utilities. Account designations, instructions, interpretations, and references to "nonmajor" utilities will not apply.

C. The Commission does not commit itself to the approval or acceptance of any item set out in any account, for the purpose of fixing rates or in determining other matters before the Commission."

(Source: Amended at Ill. Reg. , effective)

Section 415.250 General Instruction 5

In General Instruction 5, "Submittal of Questions," the phrase "~~Chief Accountant~~ Director of Accounting of the" is added between "the" and "Commission."

(Source: Amended at Ill. Reg. , effective)

Section 415.270 General Instruction 7 (Repealed)

In General Instruction 7, "~~Extraordinary Items,~~" the phrase "~~Chief Accountant of the~~" is added before "~~Commission.~~"

(Source: Repealed at Ill. Reg. , effective)

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Section 415.280 General Instruction 7.1 (Repealed)

In General Instruction 7.1, "~~Prior Period Items,~~" the phrase "~~Chief Accountant of the~~" is added between "~~request~~" and "~~Commission.~~"

(Source: Repealed at Ill. Reg. , effective)

Section 415.420 Electric Plant Instruction 2 (Repealed)

In Electric Plant Instruction 2, "~~Electric Plant To Be Recorded at Cost,~~" the following is added as Paragraph E:

"F. The cost of other value of plant contributed to the utility and contributions in the form of money or its equivalent toward the construction of electric plant recorded in accordance with the prior system of accounts under the account caption, Contributions in Aid of Construction, requires reclassification. The Contribution in Aid of Construction account has been deleted from this system of accounts. Twelve months from the effective date of this system of accounts, each utility shall submit to the Chief Accountant of this Commission its proposed journal entries to record such reclassifications. The submission shall be accompanied by sufficient detail and explanation to support the appropriate disposition of the balance existing as of the effective date of this system of accounts. The detail and explanation will be deemed sufficient if it allows the auditor to verify calculations submitted by the utility, and may include, among other things, an identification of contributions by source and purpose, information concerning depreciation, and information provided by a debit and credit approach concerning specific parcels of property."

(Source: Repealed at Ill. Reg. , effective)

Section 415.430 Electric Plant Instruction 3

In Electric Plant Instruction 3, "Components of Construction Cost," the changes set forth in the remainder of this Section are made.

a) In Paragraph (17)(b), the words "Federal Energy Regulatory" are added between "the" and "Commission's."

b) The following is added as Paragraph (17)(c):

"(c) All deviations from the AFUDC formula shown in Electric Plant Instruction 3(17)(a) above must have approval from the Chief Accountant of the

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Commission before implementation. In determining whether to approve such deviations, the Chief Accountant Commission will consider the degree to which current securities issues have changed the embedded cost included in the annual computation provided in the formula."

(Source: Amended at Ill. Reg. , effective)

Section 415.450 Electric Plant Instruction 5 (Repealed)

~~In Electric Plant Instruction 5, "Electric Plant Purchased or Sold," in Paragraph D, the phrase "Chief Accountant of the" is added between "the" and "Commission."~~

(Source: Repealed at Ill. Reg. , effective)

Section 415.1020 Account 102 (Repealed)

~~In Account 102, "Electric plant purchased or sold," in Paragraph B, the phrase "Chief Accountant of the" is added between "the" and "Commission."~~

(Source: Repealed at Ill. Reg. , effective)

Section 415.1080 Account 108 (Repealed)

~~In Account 108, "Accumulated provision for depreciation of electric utility plant," the following is added as Paragraph F:~~

~~"F. Not later than twelve months after the effective date of this system of accounts, each utility shall submit to the Chief Accountant of this Commission the method used in the segregation of the composite accumulated provision for depreciation into the functional categories heretofore prescribed. A narrative statement shall accompany the submission describing the methodology pursued to the end that a ready analysis with respect to sufficiency thereof may be made. The narrative statement will be analyzed to determine whether the proposed segregation complies with the requirements of Accounts 108."~~

(Source: Repealed at Ill. Reg. , effective)

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Section 415.2010 Accounts 201, 202, 203, and 204

In Account 201, Common Stock Issued, Account 202, Common Stock Subscribed, Account 203, Common Stock Liability for Conversion, and Account 204, Preferred Stock Issued, the following changes are adopted:

a) Identify the NOTE as NOTE A.

b) Adopt the following as NOTE B:

"Records with respect to this account shall be maintained so as to identify the amount of discount, including underwriting discounts recorded in this account. The records shall be kept so as to show separately the amount of discount on common stock issuances and preferred issuances. Amounts which have been recovered through rates shall also be identified separately. The details of this account as to amounts of discount on common and preferred stock issuances and amounts recovered through rates shall be disclosed in the annual report to the Commission (ICC Form 21). This procedure may be followed for existing common stock expenses which have not been recovered through rates as of December 31, 1993."

(Source: Added at Ill. Reg. , effective)

Section 415.2070 Account 207

In Account 207, Premium on Capital Stock, add the following as NOTE A:

"Records with respect to this account shall be maintained so as to identify the amount of discount, including underwriting discounts recorded in this account. The records shall be kept so as to show separately the amount of discount on common stock issuances and preferred issuances. Amounts which have been recovered through rates shall also be identified separately. The details of this account as to amounts of discount on common and preferred stock issuances and amounts recovered through rates shall be disclosed in the annual report to the Commission (ICC Form 21). This procedure may be followed for existing common stock expenses which have not been recovered through rates as of December 31, 1993."

(Source: Added at Ill. Reg. , effective)

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Section 415.2110 Account 211

In Account 211, Miscellaneous Paid In Capital, delete the word "all" in the last sentence of the first paragraph.

(Source: Added at Ill. Reg. , effective)

Section 415.2140 Account 214

In Account 214, Capital Stock Expense, add the following to NOTE B:

"The utility may elect to delay amortization of common stock expenses until the Commission determines the recoverability of such expenses through rates. In any case, only those common stock expenses which remain unrecovered through rates shall be recorded in this account. Common stock expenses, which have been recovered through rates, shall be amortized to Account 211, Miscellaneous Paid-In-Capital. This procedure may be followed for existing capital stock expenses which have not been recovered through rates as of December 31, 1993."

(Source: Added at Ill. Reg. , effective)

Section 415.4390 Account 439

Account 439, "Adjustments to retained earnings." The phrase "Chief Accountant Director of Accounting of the" is added before "Commission."

(Source: Amended at Ill. Reg. , effective ,)

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NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Uniform System of Accounts for Gas Utilities

2) Code Citation: 83 Ill. Adm. Code 505

3) Section Numbers: Proposed Action:

505.10	Amendment
505.20	Amendment
505.210	Amendment
505.250	Amendment
505.270	Repeal
505.280	Repeal
505.330	Amendment
505.370	Amendment
505.420	Repeal
505.430	Amendment
505.450	Repeal
505.470	Amendment
505.500	Amendment
505.1020	Repeal
505.1080	Repeal
505.2010	New Section
505.2070	New Section
505.2110	New Section
505.2140	New Section
505.4090	Repeal
505.4390	Amendment

4) Statutory Authority: Implementing Sections 5-102 and 5-103 and authorized by Section 10-101 of the Public Utilities Act [220 ILCS 5/5-102, 5-103, and 10-101].

5) A Complete Description of the Subjects and Issues Involved:
The proposed amendments update the Commission's incorporation by reference of the Federal system of accounts and bring the Commission's rules into conformance with recent Federal Energy Regulatory Commission amendments. The proposed amendments also reflect the position of "Director of Accounting" within the Commission.

6) Will these proposed amendments replace emergency amendments currently in effect? No.

7) Does this rulemaking contain an automatic repeal date? No.

8) Do these proposed amendments contain incorporations by reference? Yes.

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NOTICE OF PROPOSED AMENDMENTS

- 9) Are there any other proposed amendments pending on this Part? No.
- 10) Statement of Statewide Policy Objectives: These proposed amendments neither create nor expand any state mandate on units of local government, school districts, or community college districts.
- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking:

Any person who plans to submit comments should file a notice of intent thereof, within 21 days of the date of this issue of the Illinois Register with:

Chief Clerk
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62706

Comments should be filed with the Chief Clerk within 45 days of the date of this issue of the Illinois Register.

12) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not for profit corporations affected: These proposed amendments will not affect any small businesses, small municipalities, or not-for-profit corporations.
- B) Reporting, bookkeeping or other procedures required for compliance: Bookkeeping
- C) Types of professional skills necessary for compliance: Accounting

The full text of the Proposed Amendments begins on the next page:

ILLINOIS COMMERCE COMMISSION
NOTICE OF PROPOSED AMENDMENTS

TITLE 83: PUBLIC UTILITIES
CHAPTER I: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER d: GAS UTILITIES

PART 505
UNIFORM SYSTEM OF ACCOUNTS FOR GAS UTILITIES

SUBPART A: GENERAL PROVISIONS AND ADOPTION OF CFR PROVISIONS
BY REFERENCE

Section	
505.10	Adoption of 18 CFR 201 by Reference
505.20	Adoption of 18 CFR 216 by Reference

SUBPART B: ADDITIONS TO AND DELETIONS FROM CFR PROVISIONS

Section	
505.200	Definitions
505.210	General Instruction 1
505.250	General Instruction 5
505.270	General Instruction 7 (Repealed)
505.280	General Instruction 7.1 (Repealed)
505.330	General Instruction 12
505.340	General Instruction 13
505.370	General Instruction 16
505.380	General Instruction 17
505.390	General Instruction 18
505.410	General Instruction 20
505.420	Gas Plant Instruction 2 (Repealed)
505.430	Gas Plant Instruction 3
505.450	Gas Plant Instruction 5 (Repealed)
505.470	Gas Plant Instruction 7
505.500	Gas Plant Instruction 10
505.550	Gas Plant Instruction 15
505.940	Income Chart of Accounts
505.970	Operation and Maintenance Expense Chart of Accounts
505.1020	Account 102 (Repealed)
505.1030	Account 103
505.1050	Account 105
505.1051	Account 105.1
505.1080	Account 108 (Repealed)
505.1660	Account 166
505.2010	Accounts 201, 202, 203 and 204
505.2070	Account 207
505.2110	Account 211
505.2140	Account 214
505.4090	Account 409 (Reserved) (Repealed)
505.4160	Account 416

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505.4261 Account 426.1

505.4390 Account 439

505.9140 Accounts 914 and 915

505.9302 Account 930.2

APPENDIX G Operation and Maintenance Expense Accounts
EXHIBIT A Accounts 914 and 915

AUTHORITY: Implementing Sections 5-102 and 5-103 and authorized by Section 10-101 of the Public Utilities Act (Ill. Rev. Stat. 1985 1991, ch. 111 2/3, pars. 5-102, 5-103, and 10-101) [220 ILCS 5/5-102, 5-103, and 10-101].

SOURCE: Adopted July 14, 1960, effective January 1, 1962; old rules repealed, new rules adopted and codified at 8 Ill. Reg. 177, effective January 1, 1984; amended at 9 Ill. Reg. 4022, effective April 1, 1985; amended at 9 Ill. Reg. 13083, effective August 15, 1985; amended at 13 Ill. Reg. 10858, effective July 1, 1989; amended at 14 Ill. Reg. 1605, effective January 16, 1990; amended at Ill. Reg. , effective .

SUBPART A: GENERAL PROVISIONS AND ADOPTION OF
CFR PROVISIONS BY REFERENCE

Section 505.10 Adoption of 18 CFR 201 by Reference

The Illinois Commerce Commission adopts 18 CFR 201, as of January 1, 1988 April 1, 1993, as its uniform system of accounts for gas utilities, subject to the exceptions set forth in Section 505.200 et seq. of this Part. No incorporation in this Part includes any later amendment or edition.

(Source: Amended at Ill. Reg. , effective)

Section 505.20 Adoption of 18 CFR 216 by Reference

The Illinois Commerce Commission adopts 18 CFR 216 as of April 1, 1993 {1982} as its prescription of units of property for use in accounting for additions to and retirements of gas plant. No incorporation of 18 CFR 216 in this Part includes any later amendment or edition.

(Source: Amended at Ill. Reg. , effective)

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SUBPART B: ADDITIONS TO AND DELETIONS FROM CFR PROVISIONS

Section 505.210 General Instruction 1

General Instruction 1, "Classification of Utilities," is deleted and replaced by the following:

"A. This system of accounts applies to all utilities; provided, however, if in the opinion of any utility having annual operating revenues of less than \$10,000,000, this system of accounts should prove to be unduly burdensome, such utility may, with the approval of the Chief Accountant Director of Accounting of the Commission, group or combine certain accounts herein in order that the accounting requirements for small utilities may conform more nearly to the nature and volume of business transacted. Requests to group or combine accounts shall be made in writing, including a statement of the proposed modifications. In determining whether this system of accounts is unduly burdensome with respect to a utility, the Chief Accountant Director of Accounting shall consider, among other things, whether compliance will require additional personnel or additional office equipment such as electronic data processing equipment. The Chief Accountant Director of Accounting shall make this determination within six months of receiving the written request. Having obtained such approval, the utility shall continue to use the system as modified on a consistent basis.

B. For purpose of implementation, all gas utilities subject to Illinois Commerce Commission jurisdiction shall be regarded as "major" utilities. Account designations, instructions, and references to "nonmajor" utilities will not apply.

C. The Commission does not commit itself to the approval or acceptance of any item set out in any account, for the purpose of fixing rates or in determining other matters before the Commission."

(Source: Amended at Ill. Reg. , effective)

Section 505.250 General Instruction 5

In General Instruction 5, "Submittal of Questions," the phrase "~~Chief Accountant Director of Accounting~~ of the" is added between "the" and "Commission."

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(Source: Amended at Ill. Reg. , effective)

Section 505.270 General Instruction 7 (Repealed)

~~In General Instruction 7, "Extraordinary Items," the phrase "Chief Accountant of the" is added before "Commission."~~

(Source: Repealed at Ill. Reg. , effective)

Section 505.280 General Instruction 7.1 (Repealed)

~~In General Instruction 7.1, "Prior Period Items," the phrase "Chief Accountant of the" is added between "request" and "Commission."~~

(Source: Repealed at Ill. Reg. , effective)

Section 505.330 General Instruction 12

In General Instruction 12, "Records for Each Plant," in Paragraph B, the phrase "Chief Accountant Director of Accounting of the" is added between "the" and "Commission."

(Source: Amended at Ill. Reg. , effective)

Section 505.370 General Instruction 16

In General Instruction 16, "Accounting for Costs of gas production by pipelines and pipeline affiliates," "Significance of Commission Opinion Nos. 568 and 568A on accounting," the phrase "Federal Energy Regulatory Commission (FERC)" is substituted for the word "Commission" wherever that word appears.

(Source: Amended at Ill. Reg. , effective)

Section 505.420 Gas Plant Instruction 2 (Repealed)

~~In Gas Plant Instruction 2, "Gas plant to be recorded at cost," the following is added as Paragraph E:~~

~~E. The cost or other value of plant contributed to the utility and contributions in the form of money or its equivalent toward the construction of gas plant recorded in accordance with the prior system of accounts under the account caption, Contributions in Aid of Construction, requires reclassification. The contribution in aid of construction account has been deleted from this system of accounts. Twelve months from the effective date of this system of accounts, each utility shall submit to the~~

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~~Chief Accountant of this Commission its proposed journal entries to record such reclassifications. The submission shall be accompanied by sufficient detail and explanation to support the appropriate disposition of the balance existing as of the effective date of this system of accounts. The detail and explanation will be deemed sufficient if it allows the auditor to verify calculations submitted by the utility, and may include, among other things, an identification of contributions by source and purpose, information concerning depreciation, and information provided by a debit and credit approach concerning specific parcels of property."~~

(Source: Repealed at Ill. Reg. , effective)

Section 505.430 Gas Plant Instruction 3

In Gas Plant Instruction 3, "Components of construction cost," the changes set forth in the remainder of this Section are made.

a) In Paragraph (17)(b), the words "Federal Energy Regulatory" are added between "the" and "Commission's."

b) The following is added as Paragraph (17)(c):

"(c) All deviations from the AFUDC formula shown in Gas Plant Instruction 3 (17)(a) above must have approval from the Chief Accountant of the Commission before implementation. In determining whether to approve such deviations, the Commission Chief Accountant will consider the degree to which current securities issues have changed the embedded cost included in the annual computation provided in the formula."

(Source: Amended at Ill. Reg. , effective)

Section 505.450 Gas Plant Instruction 5 (Repealed)

~~In Gas Plant Instruction 5, "Gas plant purchased or sold," in paragraph D, the phrase "Chief Accountant of the" is added between "the" and "Commission."~~

(Source: Repealed at Ill. Reg. , effective)

Section 505.470 Gas Plant Instruction 7

In Gas Plant Instruction 7, "Land and Land Rights," in Paragraph E, the phrase "411.6, Gains from Disposition of Utility Plant, or

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411.7, Losses from Disposition of Utility Plant when such property has been recorded in Account 105, Gas Plant Held for Future Use, or in the case of major companies, Account 105.1, Production Properties Held for Future Use, otherwise to account" is deleted.

(Source: Amended at Ill. Reg. , effective)

Section 505.500 Gas Plant Instruction 10

In Gas Plant Instruction 10, "Additions and Retirements of Gas Plant," in Paragraph E, the phrase "411.6, Gains from Disposition of Utility Plant, or 411.7, Losses from Disposition of Utility Plant when the property has been recorded in Account 105, Gas Plant Held for Future Use, or in the case of major companies, Account 105.1, Production Properties Held for Future Use, otherwise to accounts" is deleted.

(Source: Amended at Ill. Reg. , effective)

Section 505.1020 Account 102 (Repealed)

In Account 102, "Gas plant purchased or sold," in Paragraph B, the phrase "Chief Accountant of the" is added between "the" and "Commission."

(Source: Repealed at Ill. Reg. , effective)

Section 505.1080 Account 108 (Repealed)

In Account 108, "Accumulated provision for depreciation of gas utility plant," the following is added as Paragraph F:

"F. Not later than twelve months after the effective date of this system of accounts, each utility shall submit to the Chief Accountant of this Commission the method used in the segregation of the composite accumulated provision for depreciation into the functional categories heretofore prescribed. A narrative statement shall accompany the submission describing the methodology pursued to the end that a ready analysis with respect to sufficiency thereof may be made. The narrative statement will be analyzed to determine whether the proposed segregation complies with the requirements of Account 108."

(Source: Repealed at Ill. Reg. , effective)

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Section 505.2010 Accounts 201, 202, 203, and 204

In Account 201, Common Stock Issued, Account 202, Common Stock Subscribed, Account 203, Common Stock Liability for Conversion, and Account 204, Preferred Stock Issued, the following changes are adopted:

a) Identify the NOTE as NOTE A.

b) Adopt the following as NOTE B:

"Records with respect to this account shall be maintained so as to identify the amount of discount, including underwriting discounts recorded in this account. The records shall be kept so as to show separately the amount of discount on common stock issuances and preferred issuances. Amounts which have been recovered through rates shall also be identified separately. The details of this account as to amounts of discount on common and preferred stock issuances and amounts recovered through rates shall be disclosed in the annual report to the Commission (ICC Form 21). This procedure may be followed for existing common stock expenses which have not been recovered through rates as of December 31, 1993."

(Source: Added at Ill. Reg. , effective)

Section 505.2070 Account 207

In Account 207, Premium on Capital Stock, add the following as NOTE A:

"Records with respect to this account shall be maintained so as to identify the amount of discount, including underwriting discounts recorded in this account. The records shall be kept so as to show separately the amount of discount on common stock issuances and preferred issuances. Amounts which have been recovered through rates shall also be identified separately. The details of this account as to amounts of discount on common and preferred stock issuances and amounts recovered through rates shall be disclosed in the annual report to the Commission (ICC Form 21). This procedure may be followed for existing common stock expenses which have not been recovered through rates as of December 31, 1993."

(Source: Added at Ill. Reg. , effective)

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Section 505.2110 Account 211

In Account 211, Miscellaneous Paid In Capital, delete the word "all" in the last sentence of the first paragraph.

(Source: Added at Ill. Reg. , effective)

Section 505.2140 Account 214

In Account 214, Capital Stock Expense, add the following to NOTE B:

"The utility may elect to delay amortization of common stock expenses until the Commission determines the recoverability of such expenses through rates. In any case, only those common stock expenses which remain unrecovered through rates shall be recorded in this account. Common stock expenses, which have been recovered through rates, shall be amortized to Account 211, Miscellaneous Paid-In-Capital. This procedure may be followed for existing capital stock expenses which have not been recovered through rates as of December 31, 1993."

(Source: Added at Ill. Reg. , effective)

Section 505.4090 Account 409 (Reserved) (Repealed)

The amendment to Account 409 "(reserved)" refers to Account 410 (reserved) in error and should read Account 409 (reserved).

(Source: Repealed at Ill. Reg. , effective)

Section 505.4390 Account 439

Account 439, "Adjustments to retained earnings." The phrase "Chief Accountant Director of Accounting of the" is added before "Commission."

(Source: Amended at Ill. Reg. , effective)

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ILLINOIS HOUSING DEVELOPMENT AUTHORITY

NOTICE OF PROPOSED RULES

1) Heading of Part: Affordable Housing Bond Program

2) Code Citation: 47 Ill. Adm. Code 365

3) Section Numbers: Proposed Action:

365.101	New Section
365.102	New Section
365.103	New Section
365.104	New Section
365.105	New Section
365.106	New Section
365.107	New Section
365.108	New Section
365.109	New Section
365.110	New Section
365.111	New Section
365.112	New Section
365.113	New Section
365.114	New Section
365.115	New Section
365.201	New Section
365.202	New Section
365.203	New Section
365.204	New Section
365.301	New Section
365.302	New Section
365.303	New Section
365.304	New Section
365.305	New Section
365.401	New Section
365.402	New Section
365.403	New Section
365.404	New Section
365.405	New Section
365.501	New Section
365.502	New Section
365.503	New Section
365.504	New Section
365.505	New Section
365.506	New Section
365.507	New Section
365.508	New Section
365.601	New Section
365.602	New Section
365.603	New Section
365.604	New Section
365.701	New Section
365.702	New Section

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

NOTICE OF PROPOSED RULES

365.703 New Section
 365.704 New Section
 365.801 New Section
 365.901 New Section
 365.1001 New Section
 365.1002 New Section
 365.1101 New Section
 365.1102 New Section
 365.1103 New Section
 365.1104 New Section
 365.1201 New Section
 365.1202 New Section
 365.1203 New Section
 365.1204 New Section
 365.1205 New Section

4) Statutory Authority: Sections 3805/7.19 and 3805/7.25 of the Illinois Housing Development Act (20 ILCS 3805/7.19 and 20 ILCS 3805/7.25) and Sections 65/4 and 65/7(e) of the Illinois Affordable Housing Act (310 ILCS 65/4 and 310 ILCS 65/7)

5) A Complete Description of the Subjects and Issues Involved: These proposed rules establish the procedures for operation of the Affordable Housing Bond Program. The Affordable Housing Bond Program was created for the making of loans and grants to acquire, construct, rehabilitate, develop, operate, insure and retain affordable single-family and multi-family housing for low-income and very low-income households.

6) Will this proposed rule replace an emergency rule currently in effect? Yes

7) Does this rulemaking contain an automatic repeal date? No

8) Does this proposed rule contain incorporations by reference?
No

9) Are there any other proposed rules pending on this Part? No

10) Statement of Statewide Policy Objectives: These proposed rules create a statewide program that creates and retains affordable housing for low-income and very low-income households.

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested parties may submit comments, data, views or arguments concerning this rulemaking in writing to: Diane K. Corbett, Esq., 401 N. Michigan Ave.,

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

NOTICE OF PROPOSED RULES

Suite 900, Chicago, Illinois 60611. The Authority will consider all written comments received at the above address within 45 days of the date of publication on this notice.

12) Initial Regulatory Flexibility Analysis:

A) Date amendment was submitted to the Business Assistance Office of the Department of Commerce and Community Affairs: January 11, 1994.

B) Types of small businesses affected: The proposed amendment will have a favorable impact on small to midsize real estate developers and contractors.

C) Reporting, bookkeeping or other procedures required for compliance: No new requirements.

D) Types of professional skills necessary for compliance: No new professional skills needed.

The full text of these Proposed Rules are identical to that of the Emergency Rules beginning on page _____ of this issue.

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NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of Part: Hearings Pursuant to Specific Rules
- 2) Code Citation: 35 Ill. Adm. Code 106
- 3) Section Numbers: Proposed Action:
 106.930 New
 106.931 New
 106.932 New
 106.933 New
 106.934 New
- 4) Statutory Authority:
 415 ILCS 5/27 and 28.5 (1992).
- 5) A Complete Description of the Subjects and Issues Involved:
 The proposed rule adds procedures necessary to implement the proposed rulemaking for contingency measures for PM10 nonattainment areas, as required by Section 172(c)(9) of the Clean Air Act (42 U.S.C. § 7401 et seq.)
- 6) Will this proposed rule replace an emergency rule currently in effect? ___ Yes X No
- 7) Does this rulemaking contain an automatic repeal date? ___ Yes X No
 If "yes," please specify the date: _____
- 8) Does this proposed rule (amendment, repealer) contain incorporations by reference?
 ___ Yes X No
- 9) Are there any other proposed amendments pending on this Part? ___ Yes ___ No

Section Number	Proposed Action	Illinois Register Citation
106.910	New Section	17 Ill. Reg. 16360
106.911	New Section	17 Ill. Reg. 16360
106.912	New Section	17 Ill. Reg. 16360
106.913	New Section	17 Ill. Reg. 16361
106.914	New Section	17 Ill. Reg. 16361
106.915	New Section	17 Ill. Reg. 16362

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- 106.916 New Section 17 Ill. Reg. 16363
 106.920 New Section 17 Ill. Reg. 16364
 106.921 New Section 17 Ill. Reg. 16364
 106.922 New Section 17 Ill. Reg. 16365
 106.923 New Section 17 Ill. Reg. 16365
 106.924 New Section 17 Ill. Reg. 16365
 106.925 New Section 17 Ill. Reg. 16365
- 10) Statement of Statewide Policy Objectives:
 These proposed rules and amendments do not create or enlarge a state mandate as defined in Section 3(b) of the State Mandate Act [30 ILCS 805/3(b)].
- 11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:
 Send written comments concerning R93-30 within 45 days of this publication in the Illinois Register to:
 Dorothy Gunn
 Clerk of the Pollution Control Board
 100 West Randolph Street
 Suite 11-500
 Chicago, IL 60601
 and
 Laurel L. Kroack
 Assistant Counsel
 Illinois Environmental Protection Agency
 Bureau of Air
 P.O. Box 19276
 Springfield, IL 62794-9276

12) Initial Regulatory Flexibility Analysis:

These proposed rules are necessary to implement the proposed rulemaking for PM10 contingency measures mandated by Section 172(c)(9) of the Clean Air Act and, therefore, no small businesses will be affected to a degree greater than allowed by federal law. Also, these proposed rules involve procedural aspects of the proposed rulemaking. Consequently, a Regulatory Flexibility Analysis is not applicable.

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- A) Date rule was submitted to the Business Assistance Office of the Department of Commerce and Community Affairs: January 12, 1994
- B) Types of small businesses affected: Those that emit 15 tons per year or more of PM10.
- C) Reporting, bookkeeping or other procedures required for compliance: N/A
- D) Types of professional skills necessary for compliance: None

The full text of the Proposed Rule begins on the next page:

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE A: GENERAL PROVISIONS
CHAPTER I: POLLUTION CONTROL BOARD

PART 106

HEARINGS PURSUANT TO SPECIFIC RULES

SUBPART A: HEATED EFFLUENT DEMONSTRATIONS

Section
106.101
106.102
106.103
106.104
106.105
106.106
106.107

Petition
Requirements for Petition
Parties
Recommendation
Notice and Hearing
Transcripts
Opinion and Order

SUBPART B: ARTIFICIAL COOLING LAKE DEMONSTRATIONS

Section
106.201
106.202
106.203
106.204

Petition
Notice and Hearing
Transcripts
Effective Date

SUBPART C: SULFUR DIOXIDE DEMONSTRATIONS

Section
106.301
106.302
106.303
106.304
106.305
106.306

Petition
Requirements for Petition
Parties
Recommendation
Notice and Hearing
Transcripts

SUBPART D: RCRA ADJUSTED STANDARD PROCEDURES

Section
106.401
106.402
106.403
106.404
106.405
106.406
106.407
106.408
106.410

Petition (Repealed)
Notice of Petition (Repealed)
Recommendation (Repealed)
Response (Repealed)
Public Comment (Repealed)
Public Hearings (Repealed)
Decision (Repealed)
Appeal (Repealed)
Scope and Applicability

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NOTICE OF PROPOSED AMENDMENTS

106.411 Joint or Single Petition
 106.412 Request to Agency to Join as Co-Petitioner
 106.413 Contents of Petition
 106.414 Response and Reply
 106.415 Notice and Conduct of Hearing
 106.416 Opinions and Orders

SUBPART E: AIR ADJUSTED STANDARD PROCEDURES

Section
 106.501 Scope and Applicability
 106.502 Joint or Single Petition
 106.503 Request to Agency to Join As Co-Petitioner
 106.504 Contents of Petition
 106.505 Response and Reply
 106.506 Notice and Conduct of Hearing
 106.507 Opinions and Orders

SUBPART F: WATER WELL SETBACK EXCEPTION PROCEDURES

Section
 106.601 Scope and Applicability
 106.602 Contents of Petition
 106.603 Response and Reply
 106.604 Notice and Conduct of Hearing
 106.605 Opinions and Orders

SUBPART G: ADJUSTED STANDARDS

Section
 106.701 Applicability
 106.702 Definitions
 106.703 Joint or Single Petition
 106.704 Request to Agency to Join As Co-Petitioner
 106.705 Petition Contents
 106.706 Petition Verification
 106.707 Federal Procedural Requirements
 106.708 Incorporated Material
 106.709 Motions
 106.710 Service of Filings
 106.711 Petition Notice
 106.712 Proof of Petition Notice
 106.713 Request for Public Hearing
 106.714 Agency Response
 106.715 Amended Petition and Amended Response
 106.801 Hearing Scheduled
 106.802 Hearing Notice
 106.803 Pre-Hearing Submission of Testimony and Exhibits

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

106.804 Discovery
 106.805 Admissible Evidence
 106.806 Order of Hearing
 106.807 Post-hearing Comments
 106.808 Burden of Proof
 106.901 Board Deliberations
 106.902 Dismissal of Petition
 106.903 Board Decision
 106.904 Opinion and Order
 106.905 Appeal of Board Decisions
 106.906 Publication of Adjusted Standards
 106.907 Effect of Filing a Petition

SUBPART J: CULPABILITY DETERMINATIONS

Section
 106.930 Applicability
 106.931 Petition
 106.932 Response and Reply
 106.933 Notice and Hearing
 106.934 Opinion and Order

Appendix A: Old Rule Numbers Referenced

AUTHORITY: Implementing Sections 5, 14.2(c), 22.4, 27, 28, and 28.1, 28.5 and 39.5 and authorized by Sections 26 and 39.5 of the Environmental Protection Act, [415 ILCS 5/5, 14.2(c), 22.4, 27, 28, 28.1, 28.5, 26 and 39.5].

SOURCE: Filed with Secretary of State January 1, 1978; amended at 4 Ill. Reg. 2, p. 186, effective December 27, 1979; codified at 6 Ill. Reg. 8357; amended in R85-22 at 10 Ill. Reg. 992, effective February 2, 1986; amended in R86-46 at 11 Ill. Reg. 13457, effective August 4, 1987; amended in R82-1 at 12 Ill. Reg. 12484, effective July 13, 1988; amended in R88-10 at 12 Ill. Reg. 12817, effective July 21, 1988; amended in R88-5(A) at 13 Ill. Reg. 12094, effective July 10, 1989; amended in R88-5(B) at 14 Ill. Reg. 9442, effective June 5, 1990; amended in R93-30 at 18 Ill. Reg. _____, effective _____.

NOTE: Capitalization denotes statutory language.

SUBPART J: CULPABILITY DETERMINATIONS

Section 106.930 Applicability

The provisions of this Subpart shall apply to any proceeding initiated by an owner or operator of a source pursuant to a

POLLUTION CONTROL BOARD

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finding of culpability by the Agency under 35 Ill. Adm. Code 212.702 and 212.705.

(Source: Added at 18 Ill. Reg. _____, effective _____)

Section 106.931 Petition

a) A Proceeding brought under this Subpart shall be commenced by the owner or operator of a source by serving a petition upon the Agency and filing 10 copies with the Clerk of the Board.

b) A petition filed pursuant to this Subpart shall include a detailed description of and justification for the source's assertion that a finding of culpability by the Agency under 35 Ill. Adm. Code 212.705 is improper or incorrect.

(Source: Added at 18 Ill. Reg. _____, effective _____)

Section 106.932 Response and Reply

a) The Agency may file a response to a petition appealing a determination of culpability within 21 days after service of the petition.

b) The petitioner may file a reply within 7 days after the filing of any response by the Agency.

(Source: Added at 18 Ill. Reg. _____, effective _____)

Section 106.933 Notice and Hearing

a) The Clerk of the Board shall give notice of the petition and any hearing in accordance with 35 Ill. Adm. Code 103. The proceeding shall be conducted in accordance with 35 Ill. Adm. Code 103.

b) The burden of proof in such proceedings shall be on the petitioner.

(Source: Added at 18 Ill. Reg. _____, effective _____)

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Section 106.934 Opinion and Order

The Board shall issue a written opinion and order within 120 days after the filing of the petition that sets forth the Board's decision and supporting rationale.

(Source: Added at 18 Ill. Reg. _____, effective _____)

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- 1) Heading of Part: Visible and Particulate Matter Emissions
- 2) Code Citation: 35 Ill. Adm. Code 212
- 3) Section Numbers: Proposed Action:
- | | |
|---------|---------|
| 212.113 | Amended |
| 212.700 | New |
| 212.701 | New |
| 212.702 | New |
| 212.703 | New |
| 212.704 | New |
| 212.705 | New |
- 4) Statutory Authority:
- 415 ILCS 5/27 and 28.5 (1992).
- 5) A Complete Description of the Subjects and Issues Involved:
- The proposed rule addresses contingency measures for PM10 nonattainment areas in the event there is a finding by the Administrator of USEPA of failure to attain the National Ambient Air Quality Standard (NAAQS) for PM10 or there is a violation of the NAAQS for PM10, as required by Section 172 (c)(9) of the Clean Air Act (42 U.S.C. § 7401 et seq.)
- 6) Will this proposed rule replace an emergency rule currently in effect? Yes ☒ No ☐
- 7) Does this rulemaking contain an automatic repeal date? Yes ☒ No ☐
- If "yes," please specify the date: _____
- 8) Does this proposed rule (amendment, repealer) contain incorporations by reference?
- ☒ Yes ☐ No
- 9) Are there any other proposed amendments pending on this Part? Yes ☒ No ☐
- 10) Statement of Statewide Policy Objectives:
- These proposed rules and amendments do not create or enlarge a state mandate as defined in Section 3(b) of the State Mandate Act [30 ILCS 805/3(b)].

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NOTICE OF PROPOSED AMENDMENTS

- 11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:
- Send written comments concerning R93-30 within 45 days of this publication in the Illinois Register to:
- Dorothy Gunn
Clerk of the Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, IL 60601
- and
- Laurel L. Kroack
Assistant Counsel
Illinois Environmental Protection Agency
Bureau of Air
P.O. Box 19276
Springfield, IL 62794-9276
- 12) Initial Regulatory Flexibility Analysis:
- These proposed rules are mandated by the Clean Air Act and, therefore, no small businesses will be affected to a degree greater than allowed by federal law. Consequently, a Regulatory Flexibility Analysis is not applicable.
- A) Date rule was submitted to the Business Assistance Office of the Department of Commerce and Community Affairs: January 12, 1994
- B) Types of small businesses affected:
Those that emit 15 tons per year or more of PM10.
- C) Reporting, bookkeeping or other procedures required for compliance: N/A
- D) Types of professional skills necessary for compliance: None
- The full text of the Proposed Rule begins on the next page:

POLLUTION CONTROL BOARD

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TITLE 35: ENVIRONMENTAL PROTECTION

SUBTITLE B: AIR POLLUTION

CHAPTER I: POLLUTION CONTROL BOARD

SUBCHAPTER C: EMISSION STANDARDS AND
LIMITATIONS FOR STATIONARY SOURCES

PART 212

VISIBLE AND PARTICULATE MATTER EMISSIONS

SUBPART A: GENERAL

Section
212.100
212.107
212.108
212.109
212.110
212.111
212.112
212.113

Scope and Organization
Measurement Method for Visible Emissions
Measurement Methods for PM-10 Emissions
Measurement Methods for Opacity
Measurement Methods For Particulate Matter
Abbreviations and Units
Definitions
Incorporations by Reference

SUBPART B: VISIBLE EMISSIONS

Section
212.121
212.122
212.123
212.124
212.125
212.126

Opacity Standards
Limitations for Certain New Sources
Limitations for All Other Sources
Exceptions
Determination of Violations
Adjusted Opacity Standards Procedures

SUBPART D: PARTICULATE MATTER EMISSIONS
FROM INCINERATORS

Section
212.181
212.182
212.183
212.184
212.185

Limitations for Incinerators
Aqueous Waste Incinerators
Certain Wood Waste Incinerators
Explosive Waste Incinerators
Continuous Automatic Stoking Animal Pathological Waste Incinerators

SUBPART E: PARTICULATE MATTER EMISSIONS
FROM FUEL COMBUSTION EMISSION SOURCES

Section
212.201

Existing Sources Using Solid Fuel Exclusively Located in the Chicago Area

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212.202 Existing Sources Using Solid Fuel Exclusively Located Outside the Chicago Area
212.203 Existing Controlled Sources Using Solid Fuel Exclusively
212.204 New Sources Using Solid Fuel Exclusively
212.205 Existing Coal-fired Industrial Boilers Equipped with Flue Gas Desulfurization Systems
212.206 Sources Using Liquid Fuel Exclusively
212.207 Sources Using More Than One Type of Fuel
212.208 Aggregation of Existing Sources
212.209 Village of Winnetka Generating Station
212.210 Emissions Limitations For Certain Fuel Combustion Emission Sources Located in the Vicinity of Granite City

SUBPART K: FUGITIVE PARTICULATE MATTER

Section
212.301
212.302
212.304
212.305
212.306
212.307
212.308
212.309
212.310
212.312
212.313
212.314
212.315
212.316

Fugitive Particulate Matter
Geographical Areas of Application
Storage Piles
Conveyor Loading Operations
Traffic Areas
Materials Collected by Pollution Control Equipment
Spraying or Choke-Feeding Required
Operating Program
Minimum Operating Program
Amendment to Operating Program
Emission Standard for Particulate Collection Equipment
Exception for Excess Wind Speed
Covering for Vehicles
Emission Limitations for Sources in Certain Areas

SUBPART L: PARTICULATE MATTER EMISSIONS
FROM PROCESS EMISSION SOURCES

Section
212.321
212.322
212.323
212.324

New Process Sources
Existing Process Sources
Stock Piles
Process Emission Sources in Certain Areas

SUBPART N: FOOD MANUFACTURING

Section
212.361
212.362

Corn Wet Milling Processes
Sources in Certain Areas

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SUBPART O: PETROLEUM REFINING,
PETROCHEMICAL AND CHEMICAL MANUFACTURING

Section
212.381 Catalyst Regenerators of Fluidized Catalytic Converters

SUBPART Q: STONE, CLAY, GLASS AND
CONCRETE MANUFACTURING

Section
212.421 New Portland Cement Processes
212.422 Portland Cement Manufacturing Processes
212.423 Emission Limits for the Portland Cement Manufacturing
Plant Located in LaSalle County, South of the Illinois
River

212.424 Fugitive Particulate Matter Control for the Portland
Cement Manufacturing Plant and Associated Quarry
Operations Located in LaSalle County, South of the
Illinois River
Sources in Certain Areas

212.425

SUBPART R: PRIMARY AND FABRICATED METAL
PRODUCTS AND MACHINERY MANUFACTURE

Section
212.441 Steel Manufacturing Processes
212.442 Beehive Coke Ovens
212.443 Coke Plants
212.444 Sinter Processes
212.445 Blast Furnace Cast Houses
212.446 Basic Oxygen Furnaces
212.447 Hot Metal Desulfurization Not Located in the BOF
212.448 Electric Arc Furnaces
212.449 Argon-Oxygen Decarburization Vessels
212.450 Liquid Steel Charging
212.451 Hot Scarfing Machines
212.452 Measurement Methods
212.453 Highlines on Steel Mills
212.454 Certain Small Foundries
212.455 Certain Small Iron-melting Air Furnaces
212.456 Sources in Certain Areas
212.458

SUBPART S: AGRICULTURE

Section
212.461 Grain Handling and Drying in General
212.462 Grain Handling Operations
212.463 Grain Drying Operations

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212.464 Sources in Certain Areas

SUBPART T: CONSTRUCTION AND WOOD PRODUCTS

Section
212.681 Grinding, Woodworking, Sandblasting and Shotblasting

SUBPART U: ADDITIONAL CONTROL MEASURES

Section
212.700 Applicability
212.701 Contingency Measure Plans, Submittal and Compliance
Date
212.702 Determination of Contributing Sources
212.703 Contingency Measure Plan Elements
212.704 Implementation
212.705 Alternative Implementation

212. Appendix A Rule into Section Table
212. Appendix B Section into Rule Table
212. Appendix C Past Compliance Dates

212. Illustration A: Allowable Emissions from Solid Fuel
Combustion Emission Sources Outside Chicago
212. Illustration B: Limitations for all New Process Emission
Sources
212. Illustration C: Limitations for all Existing Process Emission
Sources

212. Illustration D: McCook Vicinity Map
212. Illustration E: Lake Calumet Vicinity Map
212. Illustration F: Granite City Vicinity Map

AUTHORITY: Implementing Section 10 and authorized by Section 27
and 28.5 of the Environmental Protection Act [415 ILCS 5/10,27
and 28.5].

SOURCE: Adopted as Chapter 2: Air Pollution, Rules 202 and 203:
Visual and Particulate Emission Standards and Limitations,
R71-23, 4 PCB 191, filed and effective April 14, 1972; amended in
R77-15, 32 PCB 403, at 3 Ill. Reg. 5, p. 798, effective February
3, 1979; amended in R78-10, 35 PCB 347, at 3 Ill. Reg. 39, p.
184, effective September 28, 1979; amended in R78-11, 35 PCB 505,
at 3 Ill. Reg. 45, p. 100, effective October 26, 1979; amended in
R78-9, 38 PCB 411, at 4 Ill. Reg. 24, p. 514, effective June 4,
1980; amended in R79-11, 43 PCB 481, at 5 Ill. Reg. 11590,
effective October 19, 1981; codified at 7 Ill. Reg. 13591;
amended in R82-1 (Docket A), 10 Ill. Reg. 12637, effective July
9, 1986; amended in R85-33 at 10 Ill. Reg. 18030, effective

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October 7, 1986; amended in R84-48 at 11 Ill. Reg. 691, effective December 18, 1986; amended in R84-42 at 11 Ill. Reg. 1410, effective December 30, 1986; amended in R82-1 (Docket B) at 12 Ill. Reg. 12492, effective July 13, 1988; amended in R91-6 at 15 Ill. Reg. 15708, effective October 4, 1991; amended in R89-7(B) at 15 Ill. Reg. 17710, effective November 26, 1991; amended in R91-22 at 16 Ill. Reg. 7880, effective May 11, 1992; amended in R91-35 at 16 Ill. Reg. 8204, effective May 15, 1992; amended in R93-30 at 18 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL

Section 212.113 Incorporations by Reference

The following materials are incorporated by reference. These incorporations do not include any later amendments or editions.

- a) Ringelmann Chart, Information Circular 833 (Revision of IC7718), Bureau of Mines, U.S. Department of Interior, May 1, 1967.
- b) 40 CFR 60, Appendix A (1991):
 - 1) Method 1: Sample and Velocity Traverses for Stationary Sources;
 - 2) Method 1A: Sample and Velocity Traverses for Stationary Sources with Small Stacks or Ducts;
 - 3) Method 2: Determination of Stack Gas Velocity and Volumetric Flow Rate (Type S pitot tube);
 - 4) Method 2A: Direct Measurement of Gas Volume Through Pipes and Small Ducts;
 - 5) Method 2C: Determination of Stack Gas Velocity and Volumetric Flow Rate in Small Stacks or Ducts (Standard Pitot Tube);
 - 6) Method 2D: Measurement of Gas Volumetric Flow Rates in Small Pipes and Ducts;
 - 7) Method 3: Gas Analysis for Carbon Dioxide, Oxygen, Excess Air, and Dry Molecular Weight;

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- 8) Method 4: Determination of Moisture Content in Stack Gases;
- 9) Method 5: Determination of Particulate Emissions From Stationary Sources;
- 10) Method 5A: Determination of Particulate Emissions From the Asphalt Processing and Asphalt Roofing Industry;
- 11) Method 5D: Determination of Particulate Matter Emissions From Positive Pressure Fabric Filters;
- 12) Method 5E: Determination of Particulate Emissions From the Wool Fiberglass Insulation Manufacturing Industry;
- 13) Method 9: Visual Determination of the Opacity of Emissions from Stationary Sources;
- 14) Method 22: Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares.
- c) 40 CFR 51 Appendix M (1990):
 - 1) Method 201: Determination of PM-10 Emissions;
 - 2) Method 201A: Determination of PM-10 Emissions (Constant Sampling Rate Procedures).
 - d) 40 CFR 60.672(b), (c), (d) and (e) (1991).
 - e) 40 CFR 60.675(c) and (d) (1991).
 - f) ASAE Standard 248.2, Section 9, Basis for Stating Drying Capacity of Batch and Continuous-Flow Grain Dryers, American Society of Agricultural Engineers, 2950 Niles Road, St. Joseph, MI 49085.
 - g) U.S. Sieve Series, ASTM-E11, American Society of Testing Materials, 1916 Race Street, Philadelphia, PA 19103.
 - h) 55 Fed. Reg. 41546, (October 12, 1990), Method 202: Determination of Condensable Particulate Emissions from Stationary Sources.

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- i) Standard Methods for the Examination of Water and Wastewater, Section 209C, "Total Filtrable Residue Dried at 103 - 105°C." 15th Edition, 1980, American Public Health Association 1015 Fifteenth Street, N.W., Washington, D.C. 20005.
- ii) "Guideline on the Identification and Use of Air Quality Data Affected by Exceptional Events." U.S. Environmental Protection Agency, Office of Air and Radiation, Office of Air Quality Planning and Standards Monitoring and Data Analysis Division, Research Triangle Park, N.C. 27711, EPA-450/4-86.007 July 1986.
- kl) "Guideline on Air Quality Models (Revised)"; U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711, EPA-450/2-78-027R July 1986.
- ll) 40 CFR 50, Appendix K (1992), "Interpretation of the National Ambient Air Quality Standard for Particulate Matter".
- (Source: Amended at 18 Ill. Reg. _____, effective _____)

SUBPART U: ADDITIONAL CONTROL MEASURES

Section 212.700 Applicability

- a) This Subpart shall apply to those sources in the areas designated in and subject to Sections 212.324(a)(1) or 212.423(a) and that have actual annual source-wide emissions of PM-10 of at least fifteen (15) tons per year.
- b) A source's actual annual source-wide emissions of PM-10 shall be the total of its fugitive emissions and its emissions from process emission units and fuel combustion emission units and as set forth in the source's Annual Emissions Report submitted pursuant to 35 Ill. Adm. Code 254.
- (Source: Added at 18 Ill. Reg. _____, effective _____)
- Section 212.701 Contingency Measure Plans, Submittal and Compliance Date
- a) Those sources subject to this Subpart shall prepare contingency measure plans reflecting the PM-10 emission

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- reductions set forth in section 212.703 of this Subpart. These plans shall become federally enforceable permit conditions. Such plans shall be submitted to the Agency by November 15, 1994. Notwithstanding the foregoing, sources that become subject to the provisions of this Subpart after July 1, 1994, shall submit a contingency measure plan to the Agency for review and approval within ninety (90) days after the date such source or sources became subject to the provisions of this Subpart. The Agency shall notify those sources requiring contingency measure plans, based on the Agency's current information; however, the Agency's failure to notify any source of its requirement to submit contingency measure plans shall not be a defense to a violation of this Subpart and shall not relieve the source of its obligation to timely submit a contingency measure plan.
- b) If the Agency disapproves the initial submittal of a contingency measure plan or a source fails to revise a plan so that it is approvable, the Agency shall so notify the source in writing and the source may treat such notice as a permit denial.
- c) Sources having operational changes subject to Sections 212.304, 212.305, 212.306, 212.308, 212.316(a) through (e), 212.424 or 212.464 which require either a new permit or a revision to an existing permit, shall, within 30 days of such changes, submit a request to modify its permit in order to include a new, appropriate contingency measure plan. Such new plan shall be subject to the requirements of this Subpart.
- d) A source may, consistent with the requirements of this Subpart and any applicable permitting requirements, propose revisions to its contingency measure plan.
- (Source: Added at 18 Ill. Reg. _____, effective _____)
- Section 212.702 Determination of Contributing Sources
- a) If the review of monitoring data reveals an exceedence of the 24-hour ambient air quality standard for PM-10 found at 35 Ill. Adm. Code 243.120, the Agency shall attempt to determine the source or sources causing or contributing to the exceedence.
- b) In determining whether a source has caused or

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contributed to an exceedance of the 24-hour ambient air quality standard for PM-10, the Agency may take whatever steps as are necessary to determine which source or sources are culpable for the exceedance, including, but not limited to:

- 1) Evaluating whether the exceedance can be classified as an "exceptional event" pursuant to the "Guideline on the Identification and Use of Air Quality Data Affected by Exceptional Events," incorporated by reference in Section 212.113 of this Part;
- 2) Reviewing operating records of the source or sources identified pursuant to subsections (b)(3) and (b)(4) below to determine whether any source or sources so identified experienced a malfunction or breakdown or violated any term or condition of its operating permit which contributed to the exceedance;
- 3) Evaluating the monitoring equipment filter evidencing the exceedance to determine the types of sources that contributed to the exceedance; and
- 4) Evaluating meteorological data and conducting dispersion analyses pursuant to the "Guideline on Air Quality Models (Revised)," incorporated by reference in Section 212.113 of this Part, to determine which source or sources caused or contributed to the exceedance.

c) If the Agency determines that the exceedance can be classified as an exceptional event, the Agency shall make a written request to USEPA to void the exceedance. If the exceedance has been caused by an "exceptional event," the Agency shall make no requests upon any source for Level I or Level II controls pursuant to Section 212.704(a) or (b) of this Subpart until such time as USEPA has denied the Agency's request to void the exceedance or until an additional exceedance of the 24-hour ambient air quality standard which is not due to an exceptional event, as determined by the Agency, has been monitored for the same area.

d) If the Agency determines that the exceedance was due to a malfunction or breakdown or violation of any term or condition of a source's operating permit, the Agency

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shall contact such source and may pursue appropriate action under 35 Ill. Adm. Code 103.

(Source: Added at 18 Ill. Reg. _____, effective _____)
Section 212.703 Contingency Measure Plan Elements

a) All sources subject to this Subpart shall submit a contingency measure plan. The contingency measure plan shall contain two levels of control measures:

- 1) Level I measures are measures that will reduce total source-wide fugitive emissions of PM-10 subject to control under Sections 212.304, 212.305, 212.306, 212.308, 212.316(a) through (e), 212.424 or 212.464 by at least 15%.
- 2) Level II measures are measures that will reduce total source-wide fugitive emissions of PM-10 subject to control under Sections 212.304, 212.305, 212.306, 212.308, 212.316(a) through (e), 212.424 or 212.464 by at least 25%.

b) A source may elect to demonstrate compliance with this Subpart by submitting an alternative control plan which has been approved by the Agency and USEPA as federally enforceable permit conditions. If a source elects to include controls on process emission units, fuel combustion emission units, or other fugitive emissions of PM-10 not subject to Sections 212.304, 212.305, 212.306, 212.308, 212.316(a) through (e), 212.424 or 212.464 at the source in its alternative control plan, the plan must include a reasonable schedule for implementation of such controls, not to exceed two (2) years. This implementation schedule is subject to Agency review and approval.

(Source: Added at 18 Ill. Reg. _____, effective _____)
Section 212.704 Implementation

a) Following any exceedance of the 24-hour ambient air quality standard for PM-10, the Agency shall notify the source or sources the Agency has identified as likely to be causing or contributing to an exceedance detected by monitoring. Within ninety (90) days of receipt of such notification, each source so notified may implement Level I or Level II measures, as determined

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pursuant to subsection (d)(1) below.

- b1. If there is a violation of the ambient air quality standard for PM-10 as determined in accordance with 40 CFR Part 50, Appendix K, incorporated by reference in Section 212.113 of this Part, the Agency shall notify the source or sources the Agency has identified as likely to be causing or contributing to one or more of the exceedences leading to such violation, and such source or sources shall implement Level I or Level II measures, as determined pursuant to subsection (d)(2) below. The source or sources so identified shall implement such measures corresponding to fugitive emissions within ninety (90) days of receipt of such notification and shall implement such measures corresponding to any nonfugitive emissions according to the approved schedule set forth in such source's alternative control plan. Any source identified as causing or contributing to a violation of the ambient air quality standard for PM-10 may appeal any finding of culpability by the Agency to the Board pursuant to Subpart J of 35 Ill Adm. Code 106.

- c1. Upon the finding of a failure to attain by the Administrator of USEPA, the Agency shall notify all sources in the applicable area required to submit contingency measure plans pursuant to Section 212.700 of this Subpart of such finding by the Administrator. All such sources subject to this Subpart shall, within ninety (90) days of receipt of such notification, implement any Level II measures corresponding to fugitive emissions subject to control under Sections 212.304, 212.305, 212.306, 212.308, 212.316(a) through (e), 212.424 or 212.464 and shall implement any Level II measures corresponding to any nonfugitive emissions of PM-10 according to the approved schedule set forth in such source's alternative control plan, unless such corresponding Level II controls have been previously implemented by such source or sources pursuant to subsection (a) or (b) above.

- d1. The Agency shall request Level I or Level II measures pursuant to subsection (a) above as follows:

- 1) Level I measures shall be requested when the magnitude of the monitored exceedence at a given air quality monitor is less than or equal to 170

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ug/m³.

- 2) Level II measures shall be requested when the magnitude of the monitored exceedence at a given air quality monitor exceeds 170 ug/m³.

- e1. The Agency shall require Level I or Level II measures pursuant to subsection (b) above as follows:

- 1) Level I measures shall be required when the design value of a violation of the 24-hour ambient air quality standard, as computed pursuant to 40 CFR 50, Appendix K, incorporated by reference in Section 212.113 of this Part, is less than or equal to 170 ug/m³.

- 2) Level II measures shall be required when the design value of a violation of the 24-hour ambient air quality standard, as computed pursuant to 40 CFR 50, Appendix K, incorporated by reference in Section 212.113 of this Part, exceeds 170 ug/m³.

(Source: Added at 18 Ill. Reg. _____, effective _____)

Section 212.705 Alternative Implementation

Should the Agency determine that more than one source has caused or contributed to the implementation of this Subpart, the Agency may accept controls from fewer than all of the sources identified as culpable where greater than the required levels of control for all culpable sources are achieved at some of the culpable sources.

- a) For the purposes of this Section, an "identified source" is a source determined to be culpable for an exceedence of the 24-hour ambient air quality standard.
- b) For the purposes of this Section, a "participating source" is another source that is also identified as culpable by the Agency for the monitored exceedence.
- c) For the purposes of this Section, "equivalent air quality benefits" shall be determined by conducting one or more dispersion analyses in accordance with the "Guideline on Air Quality Models (revised)," incorporated by reference in Section 212.113 of this Part.

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d) An identified source may elect to achieve compliance with the provisions of this Subpart by obtaining equivalent air quality benefits from PM-10 emissions reductions by a participating source as would be achieved at the identified source, provided, however, that the PM-10 emissions reductions to be achieved by the participating source under this Section are in addition to any other obligation it may have under this Subpart to reduce PM-10 emissions.

e) If an identified source elects to rely on this Section to demonstrate compliance with this Subpart, the identified source must:

- 1) Demonstrate to the Agency that it will achieve equivalent air quality benefits from PM-10 emission reductions at the participating source as would be achieved from the identified source subject to this Subpart;
- 2) The PM-10 emissions reductions from the participating source that the identified source is relying upon to demonstrate compliance with this Subpart must be reflected as federally enforceable permit conditions of the participating source's permit;
- 3) The participating source implements any emissions reductions for fugitive emissions of PM-10 within ninety (90) days after the identified source would have been required to implement Level I or Level II measures pursuant to this Subpart; and
- 4) The participating source submits a reasonable schedule for implementation of any PM-10 emission reductions from controls on process emission units, fuel combustion emission units, or other fugitive emissions of PM-10 at the participating source not subject to control under Sections 212.304, 212.305, 212.306, 212.308, 212.316(a) through (e), 212.424 or 212.464, not to exceed two (2) years from the date of notification to the identified source that Level I or Level II measures, as appropriate, are required.

(Source: Added at 18 Ill. Reg. _____, effective _____)

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Retailers' Occupation Tax
- 2) Code Citation: 86 Ill. Adm. Code 130
- 3) Section Numbers: Proposed Action:
130.2007 Amendment
- 4) Statutory Authority: Ill. Rev. Stat. 1991, ch. 120, par. 440 et seq [35 ILCS 120/1 et seq.]
- 5) A. Complete Description of the Subjects and Issues Involved:
The amendment clarifies that the effective date for an exemption identification number is the date that the number is issued by the Department. The amendment would permit a retailer to file a claim for credit for tax paid on sales of tangible personal property to an organization that has a completed exemption application pending before the Department. The sale of the property must take place at least ninety days after the Department has received the completed exemption identification number application in order to be submitted as a qualifying claim for credit. Disposition of these claims will be held pending the issuance of an exemption identification number to the applicant.
- 6) Will this proposed rule replace an emergency rule currently in effect:
No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Does this proposed amendment contain incorporations by reference? No
- 9) Are there any other proposed amendments pending on this Part: Yes

Section Numbers	Proposed Action	IL Register Citation
130.901	Amendment	9/24/93, 17 Ill. Reg. 15501
- 10) Statement of Statewide Policy Objectives: This rulemaking does not create a state mandate, nor does it modify any existing state mandates.
- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rule may submit them in writing by no later than 45 days after publication of this notice to:

DEPARTMENT OF REVENUE

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Sherri Baker Spies
Associate Counsel
Illinois Department of Revenue
Office of General Counsel
101 West Jefferson
Springfield, Illinois 62794
Phone: (217) 782-7054

12) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses affected: Small businesses that make sales of tangible personal property to organizations that are in the process of acquiring an exemption identification number may be affected. Contractors making purchases of property on behalf of such organizations for incorporation into real property, may also be impacted.
- B) Reporting, bookkeeping or other procedures required for compliance: Standard bookkeeping and reporting procedures required for compliance and filing claims for credit.
- C) Types of professional skills necessary for compliance: None.

The full text of the Proposed Amendment(s) begins on the next page:

DEPARTMENT OF REVENUE

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TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE

PART 130

RETAILERS' OCCUPATION TAX

SUBPART A: NATURE OF TAX

Section
130.101
130.105
130.110
130.111
130.115
130.120

Character and Rate of Tax
Responsibility of Trustees, Receivers, Executors or Administrators
Occasional Sales
Sale of Used Motor Vehicles by Leasing or Rental Business
Habitual Sales
Nontaxable Transactions

SUBPART B: SALE AT RETAIL

Section
130.201
130.205
130.210
130.215
130.220

The Test of a Sale at Retail
Sales for Transfer Incident to Service
Sales of Tangible Personal Property to Purchasers for Resale
Further Illustrations
Sales to Lessors of Tangible Personal Property

SUBPART C: CERTAIN STATUTORY EXEMPTIONS

Section
130.305
130.310
130.315
130.320
130.321
130.325
130.330
130.335
130.340
130.345
130.350

Farm Machinery and Equipment
Food, Drugs, Medicines and Medical Appliances
Fuel Sold for Use in Vessels on Rivers Bordering Illinois
Gasohol
Fuel Used by Air Common Carriers in International Flights
Graphic Arts Machinery and Equipment Exemption
Manufacturing Machinery and Equipment
Pollution Control Facilities
Rolling Stock
Oil Field Exploration, Drilling and Production Equipment
Coal Exploration, Mining, Off Highway Hauling, Processing, Maintenance and Reclamation Equipment

SUBPART D: GROSS RECEIPTS

Section
130.401
130.405
130.410
130.415
130.420
130.425
130.430

Meaning of Gross Receipts
How to Avoid Paying Tax on State Tax Passed on to the Purchaser
Cost of Doing Business Not Deductible
Transportation and Delivery Charges
Finance or Interest Charges--Penalties--Discounts
Traded-In Property
Deposit or Prepayment on Purchase Price

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130.435	State and Local Taxes Other Than Retailers' Occupation Tax
130.440	Penalties
130.445	Federal Taxes
130.450	Installation, Alteration and Special Service Charges
	SUBPART E: RETURNS
Section	
130.501	Monthly Tax Returns--When Due--Contents
130.502	Quarterly Tax Returns
130.505	Returns and How to Prepare
130.510	Annual Tax Returns
130.515	First Return
130.520	Final Returns When Business is Discontinued
130.525	Who May Sign Returns
130.530	Returns Covering More Than One Location Under Same
	Registration--Separate Returns for Separately Registered Locations
	Payment of the Tax, Including Quarter Monthly Payments in
130.535	Certain Instances
	Returns on a Transaction by Transaction Basis
130.540	Registrants Must File a Return for Every Return Period
130.545	Filing of Returns for Retailers by Suppliers Under Certain
130.550	Circumstances
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130.805	What Records Constitute Minimum Requirement
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130.815	Preservation and Retention of Records
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Section	
130.1301	When Lessee of Premises Must File Return for Leased Department
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	Department
130.1310	Meaning of "Lessor" and "Lessee" in this Regulation
	SUBPART N: SALES FOR RESALE
Section	
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	Requirements for Certificates of Resale
130.1410	Requirements for Certificates of Resale (Repealed)
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- 130.1420 Blanket Certificate of Resale (Repealed)
- Section
130.1501 SUBPART O: CLAIMS TO RECOVER ERRONEOUSLY PAID TAX
130.1505 Claims for Credit-Limitations--Procedure
130.1510 Disposition of Credit Memoranda by Holders Thereof
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130.1601 SUBPART P: PROCEDURE TO BE FOLLOWED UPON
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- 130.1610
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- Section
130.1801 SUBPART R: POWER OF ATTORNEY
130.1805 When Powers of Attorney May be Given
130.1810 Filing of Power of Attorney With Department
Filing of Papers by Agent Under Power of Attorney
- Section
130.1901 SUBPART S: SPECIFIC APPLICATIONS
130.1905 Addition Agents to Plating Baths
130.1910 Agricultural Producers
Antiques, Curios, Art Work, Collectors' Coins, Collectors' Postage
Stamps and Like Articles
Auctioneers and Agents
Barbers and Beauty Shop Operators
Blacksmiths
Chiroprodists, Osteopaths and Chiropractors
Computer Software
130.1935 Construction Contractors and Real Estate Developers
130.1940 Co-operative Associations
130.1950 Dentists
130.1951 Enterprise Zones
130.1955 Farm Chemicals
130.1960 Finance Companies and Other Lending Agencies - Installment
Contracts - Repossessions
Florists and Nurserymen
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Operators of Games of Chance and Their Suppliers

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- 130.1980 Optometrists and Opticians
130.1985 Pawnbrokers
130.1990 Peddlers, Hawkers and Itinerant Vendors
130.1995 Personalizing Tangible Personal Property
130.2000 Persons Engaged in the Printing, Graphic Arts or Related Occupations, and Their Suppliers
130.2005 Persons Engaged in Nonprofit Service Enterprises and in Similar Enterprises Operated As Businesses, and Suppliers of Such Persons
130.2006 Sales by Teacher-Sponsored Student Organizations
130.2007 Exemption Identification Numbers
130.2008 Sales by Nonprofit Service Enterprises
130.2010 Persons Who Rent or Lease the Use of Tangible Personal Property to Others
130.2015 Persons Who Repair or Otherwise Service Tangible Personal Property
130.2020 Physicians and Surgeons
130.2025 Picture-framers
130.2030 Public Amusement Places
130.2035 Registered Pharmacists and Druggists
130.2040 Retailers of Clothing
130.2045 Retailers on Premises of the Illinois State Fair, County Fairs, Art Shows, Flea Markets and the Like
130.2050 Sales and Gifts By Employers to Employees
130.2055 Sales by Governmental Bodies
130.2060 Sales of Alcoholic Beverages, Motor Fuel and Tobacco Products
130.2065 Sales of Automobiles for Use In Demonstration
130.2070 Sales of Containers, Wrapping and Packing Materials and Related Products
130.2075 Sales To Construction Contractors, Real Estate Developers and Speculative Builders
130.2080 Sales to Governmental Bodies, Foreign Diplomats and Consular Personnel
130.2085 Sales to or by Banks, Savings and Loan Associations and Credit Unions
130.2090 Sales to Railroad Companies
130.2095 Sellers of Gasohol, Coal, Coke, Fuel Oil and Other Combustibles
130.2100 Sellers of Feeds and Breeding Livestock
130.2105 Sellers of Newspapers, Magazines, Books, Sheet Music and Phonograph Records and Their Suppliers
130.2110 Sellers of Seeds and Fertilizer
130.2115 Sellers of Machinery, Tools and the Like
130.2120 Suppliers of Persons Engaged in Service Occupations and Professions
130.2125 Trading Stamps and Discount Coupons
130.2130 Undertakers and Funeral Directors
130.2135 Vending Machines
130.2140 Vendors of Curtains, Slip Covers, Floor Covering and Other Similar Items Made to Order

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- 130.2145 Vendors of Meals
 130.2150 Vendors of Memorial Stones and Monuments
 130.2155 Vendors of Signs
 130.2156 Vendors of Steaks
 130.2160 Vendors of Tangible Personal Property Employed for Premiums, Advertising, Prizes, Etc.
 130.2165 Veterinarians
 130.2170 Warehousemen
 130. ILLUSTRATION A: Examples of Tax Exemption Cards

AUTHORITY: Implementing the Illinois Retailers' Occupation Tax Act (Ill. Rev. Stat. 1991, ch. 120, pars. 440 et seq.) [35 ILCS 120/1 et seq.] and authorized by Section 39b3 of the Civil Administrative Code of Illinois (Ill. Rev. Stat. 1991, ch. 127, par. 39b3) [20 ILCS 2505/39b3].

SOURCE: Adopted July 1, 1933; amended at 2 Ill. Reg. 50, p. 71, effective December 10, 1978; amended at 3 Ill. Reg. 12, p. 4, effective March 19, 1979; amended at 3 Ill. Reg. 13, pp. 93 and 95, effective March 25, 1979; amended at 3 Ill. Reg. 23, p. 164, effective June 3, 1979; amended at 3 Ill. Reg. 25, p. 229, effective June 17, 1979; amended at 3 Ill. Reg. 44, p. 193, effective October 19, 1979; amended at 3 Ill. Reg. 46, p. 52, effective November 2, 1979; amended at 4 Ill. Reg. 24, pp. 520, 539, 564 and 571, effective June 1, 1980; amended at 5 Ill. Reg. 818, effective January 2, 1981; amended at 5 Ill. Reg. 3014, effective March 11, 1981; amended at 5 Ill. Reg. 12782, effective November 2, 1981; amended at 6 Ill. Reg. 2860, effective March 3, 1982; amended at 6 Ill. Reg. 6780, effective May 24, 1982; codified at 6 Ill. Reg. 8229; recodified at 6 Ill. Reg. 8999; amended at 6 Ill. Reg. 15225, effective December 3, 1982; amended at 7 Ill. Reg. 7990, effective June 15, 1983; amended at 8 Ill. Reg. 5319, effective April 11, 1984; amended at 8 Ill. Reg. 19062, effective September 26, 1984; amended at 10 Ill. Reg. 1937, effective January 10, 1986; amended at 10 Ill. Reg. 12067, effective July 1, 1986; amended at 10 Ill. Reg. 19538, effective November 5, 1986; amended at 10 Ill. Reg. 19772, effective November 5, 1986; amended at 11 Ill. Reg. 4325, effective March 2, 1987; amended at 11 Ill. Reg. 6252, effective March 20, 1987; amended at 11 Ill. Reg. 18284, effective October 27, 1987; amended at 11 Ill. Reg. 18767, effective October 28, 1987; amended at 11 Ill. Reg. 19138, effective October 29, 1987; amended at 11 Ill. Reg. 19696, effective November 23, 1987; amended at 12 Ill. Reg. 5652, effective March 15, 1988; emergency amendment at 12 Ill. Reg. 14401, effective September 1, 1988, for a maximum of 150 days, modified in response to an objection of the Joint Committee on Administrative Rules at 12 Ill. Reg. 19531, effective November 4, 1988, not to exceed the 150 day time limit of the original rulemaking; emergency expired January 29, 1989; amended at 13 Ill. Reg. 11824, effective June 29, 1989; amended at 14 Ill. Reg. 241, effective December 21, 1989; amended at 14 Ill. Reg. 872, effective January 1, 1990; amended at 14 Ill. Reg. 15463, effective September 10, 1990; amended at 14 Ill. Reg. 16028, effective September 18, 1990; amended at 15 Ill. Reg. 6621, effective April 17, 1991; amended at 15 Ill. Reg. 13542, effective August 30, 1991; amended at 15 Ill. Reg. 15757, effective October 15, 1991; amended

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at 16 Ill. Reg. 1642, effective January 13, 1992; amended at 17 Ill. Reg. 860, effective January 11, 1993; amended at 17 Ill. Reg. 18142, effective October 4, 1993; amended at 17 Ill. Reg. 19651, effective Nov. 2, 1993; amended at 17 Ill. Reg. _____, effective _____.

Section 130.2007 Exemption Identification Numbers

a) Tax-exempt Purchases

1) On and after July 1, 1987, an entity which would otherwise qualify for tax-exempt status on its purchases of tangible personal property for use or consumption (refer to Section 130.2005 and Section 130.2080) cannot make tax-free purchases unless it has an active exemption identification number issued by the Department.

2) The effective date for an exemption identification number will be the date the number is issued by the Department. Until a valid exemption identification number has been issued, an organization seeking exemption must continue to pay tax when making purchases.

3) A retailer which makes sales to an organization with a completed exemption application pending before the Department, may file a claim for credit for only those sales which take place at least 30 days after the date the Department received the applicant's completed exemption application. For this purpose, an application shall be deemed pending before the Department for the entire period commencing with the date the Department received the applicant's completed exemption application and ending on the date the Department issues the applicant an active exemption identification number or at the time the Department's denial of the exemption application becomes a final administrative decision after all avenues of judicial review are exhausted or the time for seeking such review has passed without the taxpayer availing itself of such review. All claims must be filed in accordance with Section 6 of the Retailers' Occupation Tax Act and must be filed within applicable statutes of limitations. Disposition of the claim will be held pending the issuance of a tax exemption identification number to the applicant.

A) For purposes of this Section, an application will be deemed to be complete when the Springfield Office of General Counsel has received all information necessary to make a determination as to the organization's eligibility for exempt status, including information

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requested by the Department subsequent to the initial application. At the time of application, a notice of completion of the exemption application may be requested. Such a notice may be issued when the Department has received materials as described in paragraph (b) herein, sufficient to make a determination regarding applicant's exempt status.

b) Application for Exemption Identification Numbers--Requirements

An entity seeking exemption from sales tax should furnish the Department with the following:

- 1) If incorporated, copy of Articles of Incorporation.
- 2) If unincorporated, copy of organization's Constitution.
- 3) Copy of By-laws.
- 4) A narrative explaining purposes, functions and activities of the organization.
- 5) Copy of Internal Revenue Service (I.R.S.) letter, respecting federal tax-exempt status, if organization has one.
- 6) Copy of brochures or other printed material explaining the purposes, functions and activities of the organization.
- 7) Copy of most recent financial statement.
- 8) Any other information which reflects the purposes, functions and activities of the organization.

c) Determination

The information noted in subsection (b), above, enables the Department to determine the status of an organization for sales tax purposes (refer to Section 130.2005).

d) Exempt Entities With Multiple Subsidiaries, Issuance of Number

The Department, in its sole discretion, may issue to a tax-exempt organization with more than 50 subsidiaries operating in Illinois, one exemption identification number for the use of the parent organization and each of its subsidiary organizations. (Section 1g of the Act.) The Department will consider the size, uniformity, structure, and purposes of the organization as well as administrative burdens of the Department and of the applicants.

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(Source: Amended at ___ Ill. Reg. ___, effective ___)

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- 1) Heading of the Part: Issuance of Licenses
- 2) Code Citation: 92 Ill. Adm. Code 1030
- 3) Section Numbers: Proposed Action
1030.96 New Section
- 4) Statutory Authority: Section 2-104(b) of the Illinois Vehicle Title and Registration Law of the Illinois Vehicle Code (Ill. Rev. Stat. 1991, ch. 95 1/2, par. 2-104(b))[625 ILCS 5/2-104(b)] and Section 6-100 et seq. of the Illinois Driver Licensing Law of the Illinois Vehicle Code (Ill. Rev. Stat. 1991, ch. 95 1/2, par. 6-100 et seq.)[625 ILCS 5/6-100 et seq.].
- 5) A Complete Description of the Subjects and Issues Involved: This proposed rulemaking sets forth the procedure for the issuance of a Restricted Class B Commercial Driver's License for farm-related service industries pursuant to Public Act 88-450.
- 6) Will this proposed rulemaking replace an emergency rule currently in effect? No.
- 7) Does this rulemaking contain an automatic repeal date? No.
- 8) Does this proposed rulemaking contain incorporations by reference? No, this amendment does not contain incorporations by reference.
- 9) Are there any other amendments pending on this part?

Section Number	Proposed Action	Illinois Register Citation
1030.97	New Section	17 Ill. Reg. 15803 (October 1, 1993)

- 10) Statement of Statewide Policy Objective: This rulemaking will have no effect on local units of government.
- 11) Time, place and manner in which interested persons may comment on this proposed rulemaking: The Secretary of State will fully consider all comments received within 45 days of the date this notice is published. All comments must be in writing and should be sent to:

Mark A. Novak
Assistant Counsel to the Secretary
2701 S. Dirksen Parkway
Springfield, IL 62723
217/782-5356

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- 12) Initial Regulatory Flexibility Analysis: After careful consideration, the Secretary of State does not feel this proposed rulemaking will affect any types of small businesses and the proposed rule has not been submitted to the Small Business Office of the Department of Commerce and Community Affairs.

The full text of the proposed rule begins on the next page.

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TITLE 92: TRANSPORTATION
CHAPTER II: SECRETARY OF STATE

PART 1030

ISSUANCE OF LICENSES

Section	
1030.10	What Persons Shall Not be Licensed or Granted Permits
1030.11	Procedure for Obtaining a Driver's License
1030.12	Driver's License Medical Advisory Board
1030.15	Cite for Re-examination
1030.16	Physical and Mental Evaluation
1030.17	Errors in Issuance of Driver's License/Cancellation
1030.18	Medical Criteria Affecting Driver Performance
1030.20	Classification of Drivers-References
1030.30	Classification Standards
1030.40	Fifth Wheel Equipped Trucks
1030.50	Bus Driver's Authority, Religious Organization
1030.55	Commuter Van Driver Operating a For-Profit Ridesharing Arrangement
1030.60	Employer Certification Program
1030.65	Religious Exemption for Social Security Numbers
1030.65	Instruction Permits
1030.70	Driver's License Testing/Vision Screening
1030.75	Driver's License Testing/Vision Screening With Vision Aid Arrangements Other Than Standard Eye Glasses or Contact Lens(es)
1030.80	Driver's License Testing/Written Test
1030.81	Endorsements
1030.84	Vehicle Inspection
1030.85	Driver's License Testing/Road Test
1030.86	Multiple Attempts/Road Test
1030.88	Exemption of Facility Administered Road Test
1030.89	Temporary Licenses
1030.90	Requirement For Photograph and Signature of Licensee On Driver's License
1030.91	Disabled Person/Handicapped Identification Card
1030.92	Restrictions
1030.93	Restricted Local Licenses
1030.94	Duplicate or Corrected Driver's License or Instruction Permit
1030.95	Diplomatic and Consular Licenses
1030.96	Restricted Commercial Driver's License
1030.100	Anatomical Gift Donor
1030.110	Emergency Medical Information Card
1030.115	Change-of-Address
1030.120	Issuance of a Probationary License
1030.130	Grounds for Cancellation of a Probationary License
1030. Appendix A	Questions Asked of a Driver's License Applicant
1030. Appendix B	Acceptable Identification Documents

AUTHORITY: Implementing Article I of the Illinois Driver Licensing Law of the Illinois Vehicle Code (Ill. Rev. Stat. 1991, ch. 95 1/2, par. 6-100 et seq.)

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[625 ILCS 5/6-100 et seq.] and authorized by Section 2-104(b) of the Illinois Vehicle Title and Registration Law of the Illinois Vehicle Code (Ill. Rev. Stat. 1991, ch. 95 1/2, par. 2-104(b))[625 ILCS 5/2-104(b)].

SOURCE: Filed March 30, 1971; amended at 3 Ill. Reg. 7, p. 13, effective April 2, 1979; amended at 4 Ill. Reg. 27, p. 422, effective June 23, 1980; amended at 6 Ill. Reg. 2400, effective February 10, 1982; codified at 6 Ill. Reg. 12674; amended at 9 Ill. Reg. 2716, effective February 20, 1985; amended at 10 Ill. Reg. 303, effective December 24, 1985; amended at 10 Ill. Reg. 18182, effective October 14, 1986; amended at 11 Ill. Reg. 9331, effective April 28, 1987; amended at 11 Ill. Reg. 18292, effective October 23, 1987; amended at 12 Ill. Reg. 3027, effective January 14, 1988; amended at 12 Ill. Reg. 13221, effective August 1, 1988; amended at 12 Ill. Reg. 16915, effective October 1, 1988; amended at 12 Ill. Reg. 19777, effective November 15, 1988; amended at 13 Ill. Reg. 5192, effective April 1, 1989; amended at 13 Ill. Reg. 7808, effective June 1, 1989; amended at 13 Ill. Reg. 12880, effective July 19, 1989; amended at 13 Ill. Reg. 12978, effective July 19, 1989; amended at 13 Ill. Reg. 13898, effective August 22, 1989; amended at 13 Ill. Reg. 15112, effective September 8, 1989; amended at 13 Ill. Reg. 17087, effective October 16, 1989; amended at 13 Ill. Reg. 17095, effective October 18, 1989; amended at 14 Ill. Reg. 4570, effective March 8, 1990; amended at 14 Ill. Reg. 4908, effective March 9, 1990; amended at 14 Ill. Reg. 5183, effective March 21, 1990; amended at 14 Ill. Reg. 8707, effective May 16, 1990; amended at 14 Ill. Reg. 9246, effective May 16, 1990; amended at 14 Ill. Reg. 9498, effective May 17, 1990; amended at 14 Ill. Reg. 9498, effective May 17, 1990; amended at 14 Ill. Reg. 10111, effective June 12, 1990; amended at 14 Ill. Reg. 10510, effective June 18, 1990; amended at 14 Ill. Reg. 12077, effective July 5, 1990; amended at 14 Ill. Reg. 15487, effective September 10, 1990; amended at 15 Ill. Reg. 15783, effective October 18, 1991; amended at 16 Ill. Reg. 2182, effective January 24, 1992; emergency amendment at 16 Ill. Reg. 12228, effective July 26, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 18087, effective November 17, 1992; emergency amendment at 17 Ill. Reg. 1219, effective January 13, 1993; amended at 17 Ill. Reg. 2025, effective February 1, 1993; amended at 17 Ill. Reg. 7065, effective May 3, 1993; amended at 17 Ill. Reg. 8522, effective May 27, 1993; amended at 17 Ill. Reg. 19315, effective October 22, 1993; amended at 18 Ill. Reg. effective

1030.96 Restricted Commercial Driver's License

a) For purposes of this Part, the following definitions shall apply:

"Agricultural business" - any individual, partnership, corporation, or association engaged in a business operation for the purpose of selling or distributing agricultural pesticides and/or fertilizers or providing service of application of these substances in this state.

"Agricultural commodities" - includes plants and plant parts, livestock, and poultry and livestock or poultry products, seeds,

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sod, shrubs and other products of agricultural origin including premises necessary to and used directly in agricultural production.

"Alcohol" - any substance containing any form of alcohol, including but not limited to: ethanol; methanol; propanol and isopropanol.

"Alcohol concentration" - the number of grams of alcohol per 210 liters of breath; or, the number of grams of alcohol per 100 milliliters of blood; or, the number of grams of alcohol per 67 milliliters of urine.

"Class A vehicle" - any combination of vehicles with a Gross Combination Weight Rating (GCWR) of 26,001 pounds or more, provided the Gross Vehicle Weight Rating (GVWR) of the vehicle(s) being towed is in excess of 10,000 pounds. Holders of a Class A license may, with the appropriate or required endorsements, operate all vehicles within Class A, B, C, and D, but are not authorized to operate motorcycles or motor driven cycles.

"Class B vehicle" - any single vehicle with a GVWR of 26,001 or more pounds, or any such vehicle not in excess of 10,000 pounds GVWR. Holders of a Class B license may, with appropriate endorsements, operate all vehicles within Class B, C, and D, but are not authorized to operate motorcycles or motor driven cycles.

"Class C vehicle" - is defined as (a) any single vehicle with a GVWR of 16,001 or more pounds but less than 26,001 pounds GVWR, or any such vehicle towing a vehicle not in excess of 10,000 pounds GVWR; or (b) any vehicle less than 26,001 pounds GVWR designed to transport 16 or more people including the driver or used in the transportation of hazardous materials which requires the vehicle to be placarded; or (3) any vehicle less than 26,001 pounds GVWR designed to transport 16 or more people including the driver or used in the transportation of hazardous materials which requires the vehicle to be placarded, towing a vehicle with a GVWR of 10,000 pounds or less or with a GCWR of less than 26,001 pounds. Holders of a Class C license may operate all vehicles within Class C and D, but are not authorized to operate motorcycles or motor driven cycles. A Class C license is not required to operate rental vehicles when transporting an individual's own personal property or that of an immediate family member for non-business purposes within this State, if the individual has successfully completed a safety course regarding safe operation of the vehicle.

"Class D vehicle" - is defined as (a) any single vehicle with a GVWR of 16,000 pounds or less that is not designed to transport

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16 or more people or not used in the transportation of hazardous materials which would require such vehicle to be placarded; or (b) any single vehicle with a GVWR of 16,000 pounds or less that is not designed to transport 16 or more people or not used in the transportation of hazardous materials which would require such vehicle to be placarded, towing any vehicle providing the GCWR is less than 26,001 pounds. Holders of a Class D license may operate all vehicles within Class D, and may operate rental vehicles up to 26,000 pounds when transporting an individual's own personal property or that of an immediate family member for non-business purposes within the State, if the individual has successfully completed a safety course regarding the safe operation of the vehicle, but are not authorized to operate motorcycles or motor driven cycles.

"Commercial Driver's License (CDL)" - a driver's license issued by a state to a person which authorizes that person to drive a certain class of commercial motor vehicle or vehicles.

"Commercial Driver's License Information System (CDLIS)" - the information system established pursuant to the Commercial Motor Vehicle Safety Act of 1986 (CMVSA) to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.

"Commercial motor vehicle" - a motor vehicle having a GVWR of 26,001 pounds or more, or such lesser GVWR as subsequently determined by Federal regulations (49 CFR 383); or any combination of vehicles with a GCWR of 26,001 pounds or more, provided the GVWR of any vehicle(s) being towed is 10,001 pounds or more; or a vehicle designed to transport 16 or more persons; or a vehicle transporting hazardous materials that is required to be placarded. This definition does not include recreational vehicles as defined in Section 1-169 of the Illinois Vehicle Code (Ill. Rev. Stat. 1991, ch. 95 1/2, par. 1-169)[625 ILCS 5/1-169] when operated primarily for personal use, military vehicles being operated by non-civilian personnel or firefighting equipment owned or operated by or for a governmental entity.

"Controlled substance" - shall have the same meaning as defined in Section 102 of the Illinois Controlled Substances Act, and shall also include cannabis as defined in Section 3 of the Cannabis Control Act.

"Conviction" - a final adjudication of guilty by a court of competent jurisdiction either after a bench trial, trial by jury, plea of guilty, order of forfeiture, or default.

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"Custom harvester" - any individual, partnership, corporation, or association engaged in a business operation for the purpose of harvesting agricultural commodities other than their own on a contract basis.

"Department" - the Department of Driver Services within the Office of the Secretary of State.

"Disqualification" - a withdrawal of the privilege to drive a commercial motor vehicle.

"Drive" - drive, operate or be in physical control of a motor vehicle.

"Driver" - any person who drives, operates, or is in physical control of a commercial motor vehicle, or who is required to hold a commercial driver's license (CDL).

"Farm" - includes stock, dairy, poultry, forestry, fruit, fur-bearing animals and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards.

"Farm retail outlet and/or supplier" - any individual, partnership, corporation, or association engaged in a business operation for the purpose of selling or distributing agricultural commodities.

"Felony" - an offense under State or Federal law that is punishable by death or imprisonment for a term of one year or more.

"Foreign jurisdiction" - a sovereign jurisdiction that does not fall within the definition of "State".

"Full information" - all records of traffic law convictions, as contained in the records then on file in the Office of the Secretary of State or any other state, whether the person has a current driver's license then on file, the driver's license number, and the address and personal description of said person as reflected on the person's driver's license application.

"Gross vehicle weight rating (GVWR)" - the value specified by the manufacturer(s) as the maximum loaded weight of a single or combination of vehicles; or the registered gross weight; whichever is greater. The GVWR of a combination of vehicles, commonly referred to as the Gross combination weight rating

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(GVWR) is the GVWR of the power unit plus the GVWR of the towed unit or units; or the combined registered weight of the power unit plus the towed unit, whichever is greater.

"Hazardous material" - substance or material in a quantity and form which may pose an unreasonable risk to health and safety or property when transported in commerce (49 App.U.S.C.1801 et seq.)

"Invalidation" - the indefinite withdrawal of the privilege to drive a commercial motor vehicle with a seasonal restricted commercial driver's license (except as otherwise provided by in this rule).

"Livestock" - cattle, sheep, swine, buffalo, cañalo, cattalo, domestic deer, domestic elk, domestic antelope, domestic reindeer, water buffalo, and goats.

"Livestock feeder" - any individual, partnership, corporation, or association engaged in a business operation for the purpose of producing livestock.

"Motor vehicle" - every vehicle which is self-propelled, and every vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails, except vehicles moved solely by human power and motorized wheelchairs.

"Operator's license" - any driver's license to operate a motor vehicle issued under the laws of any state.

"Safety checklist" - an explanation, which is provided by an employer to an employee prior to obtaining a restricted CDL, concerning the controls and features of the vehicle and its operation.

"Seasonal Restricted Commercial Driver's License (Restricted CDL)" - a limited waiver for employees of certain farm-related services to operate specific commercial motor vehicles without a commercial driver's license for a limited period.

"Serious traffic violation" - a violation in any type of class of motor vehicle of the following offenses or a similar violation of a law or local ordinance of any state relating to motor vehicle traffic control: (1) a violation relating to excessive speeding, involving a single speeding charge of 15 miles per hour or more above the legal speed limit; or (2) a violation relating to reckless driving; or (3) a violation of any State Law or local ordinance relating to motor vehicle traffic control (other than parking violations) arising in connection with a fatal traffic

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accident; or (4) a violation of Section 6-501, relating to having multiple driver's licenses; or (5) a violation of paragraph (a), of Section 6-507 relating to the requirement to have a valid CDL; or (6) a violation relating to improper or erratic lane changes; or (7) a violation relating to following another vehicle too closely; or (8) any other similar violation of a law or local ordinance of any state relating to motor vehicle traffic control, other than a parking violation, which the Secretary of State determines pursuant to 92 Ill. Adm. Code 1040.20.

"State" - a State of the United States, the District of Columbia and any Province or Territory of Canada and Mexico.

b) In order to be eligible for a seasonal restricted commercial driver's license the applicant must meet the following qualification standards:

1) The applicant must be employed by one (1) or more of the following farm-related services:

- A) Farm Retail Outlet and/or Supplier;
- B) Agri-chemical business;
- C) Custom harvester;
- D) Livestock feeder.

2) The applicant must have held any motor vehicle operator's license for at least a period of one (1) year prior to the date of application for a seasonal restricted CDL;

3) The applicant must have a valid Illinois Class B driver's license;

4) The applicant shall not have more than one (1) driver's license;

5) The applicant's driving privileges must not have been suspended, revoked, canceled or disqualified in this state or any other state within two (2) years prior to application for a restricted CDL;

6) The applicant must not have been convicted of a "serious traffic violation" in any class of motor vehicle within two years prior to application for a restricted CDL;

7) No convictions for accident-connected traffic law violations, and no record of at-fault accidents in any class of motor vehicle within two years prior to the application for a restricted CDL;

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8) The applicant must submit with his/her initial application for a restricted CDL a letter from his initial employer verifying that the applicant is employed in one of the required farm-related services and complete the safety checklist on the application regarding the safe operation of the vehicle he/she will be operating.

A) The safety checklist shall consist of a demonstration and discussion by the employer with the employee, of the following features for the safe operation of a commercial motor vehicle:

- i) parking (hand) brake;
- ii) headlights;
- iii) parking lights;
- iv) emergency (hazard) lights;
- v) brake lights;
- vi) tires;
- vii) horn;
- viii) turn signals;
- ix) windshield wipers;
- x) rear vision mirrors;
- xi) gear shift;
- xii) safety belts.

B) The employee must be informed:

- i) that a commercial motor vehicle requires more turning area than a car and to watch when making turns;
- ii) not to tailgate since the weight of the truck requires stopping distances (at least one vehicle length for every 10 MPH between truck and vehicle ahead);

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- iii) to allow more time for acceleration when pulling out into traffic;
- iv) to obey weigh station scale signs;
- v) to observe truck speed limits;
- vi) to approach low overhangs such as gas station and motel canopies, bridges, toll booths, and drive-throughs cautiously;
- vii) to avoid backing up the truck, but, if necessary, to have another person guide them;
- viii) to drive and park cautiously on hills.

c) Prior to the issuance of a restricted CDL, the Secretary of State shall perform a records check through the Commercial Driver's License Information System (CDLIS) and enter each restricted CDL holder's record into CDLIS.

d) All drivers issued a restricted commercial driver's license shall be allowed to operate the kind and type of vehicle(s) as follows:

- 1) Class B: Any single vehicle with a GVWR of 26,001 or more pounds, or any such vehicle towing a vehicle not in excess of 10,000 pounds GVWR. Holders of a Class B license may, operate all vehicles of Classes B, C, and D, but are not authorized to operate motorcycles or motor driven cycles.
- 2) In order to transport hazardous materials intrastate a restricted CDL holder must be at least 18 years of age.
- 3) In order to transport hazardous materials interstate a restricted CDL holder must be at least 21 years of age.

4) A restricted CDL holder may transport only the following hazardous materials:

- A) 1,000 gallons or less of diesel fuel;
- B) 3,000 gallons or less of liquid fertilizer; or
- C) Solid fertilizers that are not mixed with any organic substance.

e) A restricted CDL shall be issued for either a one hundred eighty (180) day period or two ninety (90) day periods in any twelve (12) month period. In no event shall the second ninety (90) day period exceed

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the expiration of the twelve (12) month period. If a person elects the two ninety (90) day periods, he/she will receive two separate restricted CDLs prior to each period. Prior to the issuance of the second restricted CDL the Department shall review the holder's driving record for any violation as outlined in paragraph b), subparagraphs 5 through 7 Supra. The holder shall be issued the second restricted CDL provided he/she is not otherwise ineligible for the same.

f) A restricted CDL shall be valid only within 150 air miles from the farm or farm-related business being served. The holder of a restricted CDL shall at all times while employed by a farm-related service and operating a commercial motor vehicle have in his/her possession verification of his/her employment that includes the location of his/her employer's farm or farm-related business.

g) All fees shall be as required by Section 6-118 of the Illinois Driver Licensing Law of the Illinois Vehicle Code (Ill. Rev. Stat. 1991, ch. 95 1/2, par. 6-118)(625 ILCS 5/6-118). A restricted CDL may be revalidated without fee for up to four (4) years from the date of issuance of the first restricted CDL.

h) A restricted CDL shall be invalidated and/or further action taken against the individual's driving privileges if any of the following occurs:

- 1) The Secretary of State receives reliable written evidence that the individual is no longer employed by one of the required farm-related services;
- 2) The Secretary of State receives reliable written evidence that the individual has not held a motor vehicle operator's license for at least one (1) year prior to the date of application for a restricted CDL;
- 3) The Secretary of State receives reliable written evidence that the individual no longer has a valid Illinois driver's license;
- 4) The Secretary of State receives reliable written evidence that the individual's driving privileges have been suspended, revoked, canceled or disqualified in this state or any other state;
- 5) The Secretary of State receives reliable written report of a conviction of a "serious traffic violation" in any class of motor vehicle;
- 6) The Secretary of State receives reliable written report for a conviction of an accident-connected traffic law violation and/or at-fault accident;

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- 7) The Secretary of State receives reliable written evidence of any violation of this Part.
- i) An individual whose restricted CDL has been invalidated shall not be eligible to apply for another restricted CDL until the expiration of two (2) years from the effective date of his/her invalidation.
- j) A driver who possesses a restricted CDL shall be subject to the disqualification provisions of Section 6-514 of the Illinois Driver Licensing Law of the Illinois Vehicle Code. (Ill. Rev. Stat. 1991, ch. 95 1/2, par. 6-514)[625 ILCS 5/6-514].
- k) A driver who possesses a restricted CDL shall be subject to the prohibitions against driving a commercial motor vehicle while having any alcohol in such person's system as outlined in Section 6-515 of the Illinois Driver Licensing Law of the Illinois Vehicle Code. (Ill. Rev. Stat. 1991, ch. 95 1/2, par. 6-515)[625 ILCS 5/6-515].
- l) A driver who possesses a restricted CDL shall be subject to the implied consent requirements for commercial motor vehicle drivers as outlined in Section 6-516 of the Illinois Driver Licensing Law of the Illinois Vehicle Code. (Ill. Rev. Stat. 1991, ch. 95 1/2, par. 6-516)[625 ILCS 5/6-516].
- m) A driver who possesses a restricted CDL shall be subject to the implied consent warnings as outlined in Section 6-517 of the Illinois Driver Licensing Law of the Illinois Vehicle Code. (Ill. Rev. Stat. 1991, ch. 95 1/2, par. 6-517)[625 ILCS 5/6-517].
- n) A driver whose restricted CDL has been disqualified and/or invalidated who wishes to have a hearing shall follow the procedures as outlined in Section 6-520 of the Illinois Driver Licensing Law of the Illinois Vehicle Code. (Ill. Rev. Stat. 1991, ch. 95 1/2, par. 6-520)[625 ILCS 5/6-520].

(Source: Added at 18 Ill. Reg. _____, effective _____)

ILLINOIS STUDENT ASSISTANCE COMMISSION

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- 1) The Heading of the Part: College Savings Bond Bonus Incentive Grant (BIG) Program
- 2) Code Citation: 23 Ill. Adm. Code 2771
- 3) Section numbers: Proposed Action:
2771.30 Amended
2771.App.A Amended
- 4) Statutory Authority: Implementing and authorized by Section 8 of the Baccalaureate Savings Act (Ill. Rev. Stat. 1989, ch. 144, par. 2408)[110 ILCS 947/15].
- 5) A Complete Description of the Subjects and Issues Involved: ISAC annually reviews its rules in order to respond to market changes and client suggestions, to implement state and federal statutory changes, and to clarify issues that have arisen during the previous year. In addition to making minor technical and grammatical changes throughout this Part, ISAC proposes the following substantive amendments: Section 2771.30(d)(1) now contains an illustrated example of how the proceeds of bonds cannot exceed \$25,000 in any given year. This example was added for the convenience of our clients. Section 2771.30(d)(2) has been added to codify one of ISAC's policies which limits the benefits of this program to the beneficiary's cost of attendance. Another example has been added to Section 2771.30(d)(2) for the benefit of our clients. Finally, the table of grant amounts has been updated to include more recent bond issues.
- 6) Will this proposed amendment replace an emergency rule currently in effect? No.
- 7) Does this rulemaking contain an automatic repeal date? No.
- 8) Does this proposed amendment contain incorporations by reference? No.
- 9) Are there any other amendments pending on this Part? No.
- 10) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a state mandate as defined in Section 3(b) of the State Mandates Act (Ill. Rev. Stat. 1991, ch. 85, par. 2203) [30 ILCS 805/3] and does not necessitate a local government to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues.
- 11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Comments may be submitted in writing for a period of 45 days following publication of this notice. Comments should be submitted to:

ILLINOIS STUDENT ASSISTANCE COMMISSION

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Ms. Raquel G. Martinez
 Compliance Counsel
 Illinois Student Assistance Commission
 1755 Lake Cook Road
 Deerfield, Illinois 60015

- 12) Initial Regulatory Flexibility Analysis: This rulemaking does not affect small businesses.

The full text of the proposed amendments begin on the following page:

ILLINOIS STUDENT ASSISTANCE COMMISSION

NOTICE OF PROPOSED AMENDMENTS

TITLE 23: EDUCATION AND CULTURAL RESOURCES

SUBTITLE A: EDUCATION

CHAPTER XIX: ILLINOIS STUDENT ASSISTANCE COMMISSION

Part 2771

COLLEGE SAVINGS BOND BONUS INCENTIVE GRANT (BIG) PROGRAM

Section
 2771.10 Summary and Purpose
 2771.20 Definitions
 2771.30 Program Procedures
 2771. APPENDIX A - Table of Grant Amounts

AUTHORITY: Implementing and authorized by Section 8 of the Baccalaureate Savings Act (Ill. Rev. Stat. 1989, ch. 144, par. 2408) [110 ILCS 947/75].

SOURCE: Emergency rules adopted at 15 Ill. Reg. 15800, effective October 21, 1991, for a maximum of 150 days; emergency expired on March 19, 1992; adopted at 16 Ill. Reg. 6873, effective April 14, 1992; amended at 18 Ill. Reg. _____, effective _____, 1994.

Section 2771.30 Program Procedures

a) Application Procedures

- 1) Applications for a Bonus Incentive Grant (BIG) shall be available from the Illinois Student Assistance Commission (ISAC) and Eligible Institutions.

- 2) A complete application for BIG assistance shall include certifications from: the Qualified Bond Holder(s), the Student Beneficiary and the Registrar of the Eligible Institution at which the Student Beneficiary is Enrolled.

- 3) A Qualified Bond Holder or a Student Beneficiary may submit a BIG application at any time between August 1st and May 30th for a grant spanning that same Academic Year. All grants under this program are subject to sufficient annual appropriations for this program by the General Assembly.

- 4) ISAC may require applicants to provide documentation verifying that the Qualified Bond Holder owned the bonds for the requisite length of time.

b) Application certifications

- 1) The Qualified Bond Holder(s) shall certify the following for the academic year in which the application is being submitted.

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- A) that the aggregate Compound Accreted Value at maturity of the College Savings Bond(s) was not more than \$25,000;
- B) that at least 70 percent of the proceeds of the College Savings Bond(s) have been or will be used for Educational Expenses incurred by the Student Beneficiary;
- C) the name of the Student Beneficiary;
- D) that no other student has been designated as the Student Beneficiary for the same College Savings Bond; and
- E) the date on which the bond(s) were acquired and the date on which the bond(s) matured.

2) The Student Beneficiaries shall certify the following:

- A) that their address, Social Security Number and other identifying information is accurate;
- B) that the Qualified Bond Holder has provided financial assistance, in the amount indicated on the application, for Educational Expenses incurred at an Eligible Institution;
- C) that they are enrolled in an academic program that is eligible for BIG assistance; and
- D) that they will use their BIG proceeds to finance Educational Expenses.

3) The Registrar at the Eligible Institution shall certify the enrollment status of Student Beneficiaries.

- c) BIG proceeds will be paid to Eligible Institutions; however, they may be remitted directly to the Student Beneficiary if the Eligible Institution designates ISAG as its disbursing agent for this purpose.

- d) The dollar value of the BIG shall be determined according to the Table of Grant Amounts (see Appendix A of this Part); provided, however, that:

- 1) the Compound Accreted Value of the bonds shall not exceed \$25,000 in any given academic year;

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Example: A BIG could not be claimed for more than 5 bonds of \$5,000 Compound Accreted Value each in any given year. Even if 12 bonds of \$5,000 Compound Accreted Value each, or \$60,000 total, had been purchased on behalf of a beneficiary, a BIG could be paid only for the first \$25,000.

- 2) 70 percent of the Compound Accreted Value of the bonds for which a BIG is being claimed in a given academic year does not exceed the beneficiary's cost of attendance at an Eligible Institution for that year.

Example: The beneficiary's cost of attending University A is \$14,000. Since \$14,000 is 70 percent of \$20,000, a BIG could not be claimed for bonds with a Compound Accreted Value in excess of \$20,000. Even if 5 bonds of \$5,000 Compound Accreted Value each, or \$25,000 total, had been purchased on behalf of the beneficiary, in this case a BIG could be paid only on the first \$20,000.

- e) Both the proceeds of the bond(s) and the BIG assistance must be used by the Student Beneficiary in the Academic Year in which the bond was redeemed or in the academic year immediately following redemption.

- f) Applicants may request that their eligibility for ISAC gift assistance be recalculated to exclude up to \$25,000 in accumulated bonds and interest, pursuant to ISAC Appeal Procedures (see 23 Ill. Adm. Code 2700.70). Recalculations will only be performed for those students who complete the required federal needs analysis process.

(Source: Amended at 18 Ill. Reg. _____, effective _____, 1994)

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Section 2771.APPENDIX A - Table of Grant Amounts

GRANT AMOUNT PER \$5000 COMPOUND
ACCREDITED VALUE AT MATURITY

GRANT BOND MATURITY (August 1)	1/13/88 Bond Sale	9/14/88 Bond Sale	10/10/89 Bond Sale	10/16/90 Bond Sale	9/13/91 Bond Sale
1991	-	-	\$ 40	-	-
1992	-	-	\$ 60	\$ 40	-
1993	\$100	\$100	\$ 80	\$ 60	\$ 40
1994	\$120	\$120	\$100	\$ 80	\$ 60
1995	\$140	\$140	\$120	\$100	\$ 80
1996	\$160	\$160	\$140	\$120	\$100
1997	\$180	\$180	\$160	\$140	\$120
1998	\$200	\$200	\$180	\$160	\$140
1999	\$220	\$220	\$200	\$180	\$160
2000	\$240	\$240	\$220	\$200	\$180
2001	\$260	\$260	\$240	\$220	\$200
2002	\$280	\$280	\$260	\$240	\$220
2003	\$300	\$300	\$280	\$260	\$240
2004	\$320	\$320	\$300	\$280	\$260
2005	\$340	\$340	\$320	\$300	\$280
2006	\$360	\$360	\$340	\$320	\$300
2007	\$380	\$380	\$360	\$340	\$320
2008	\$400	\$400	\$380	\$360	\$340
2009	-	-	\$400	\$380	\$360
2010	-	-	\$420	\$400	\$380
2011	-	-	-	\$420	\$400
2012	-	-	-	-	\$420

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Section 2771.APPENDIX A - Table of Grant Amounts (continued)

GRANT AMOUNT PER \$5000 COMPOUND
ACCREDITED VALUE AT MATURITY

GRANT BOND MATURITY (August 1)	10/92- Bond Sale	10/93 Bond Sale
1994	\$40	-
1995	\$60	\$40
1996	\$80	\$60
1997	\$100	\$80
1998	\$120	\$100
1999	\$140	\$120
2000	\$160	\$140
2001	\$180	\$160
2002	\$200	\$180
2003	\$220	\$200
2004	\$240	\$220
2005	\$260	\$240
2006	\$280	\$260
2007	\$300	\$280
2008	\$320	\$300
2009	\$340	\$320
2010	\$360	\$340
2011	\$380	\$360
2012	\$400	\$380
2013	\$420	\$400
2014	-	\$420
2015	-	\$440

* If no grant amount is shown, there were no bonds sold at that maturity for that particular issue.

(Source: Amended at 18 Ill. Reg. _____, effective _____)

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1) The Heading of the Part: Federal Family Education Loan Program (FFELP)

2) Code Citation: 23 Ill. Adm. Code 2720

3) Section numbers: Proposed Action:

2720.6	Amended
2720.10	Amended
2720.20	Amended
2720.30	Amended
2720.35	Added
2720.40	Amended
2720.41	Amended
2720.42	Amended
2720.50	Amended
2720.55	Amended
2720.70	Amended
2720.80	Amended
2720.90	Amended

4) Statutory Authority: Implementing Section 80 through 175 of the Higher Education Student Assistance Act (Ill. Rev. Stat. 1991, ch. 144, pars. 3080 through 3175) (See P.A. 87-997, effective September 3, 1992) [110 ILCS 947/80 through 175]; Title IV, Part B, of the Higher Education Act of 1965, as amended (20 U.S.C.A. 1071 et seq.); and authorized by Section 20(f) of the Higher Education Student Assistance Act (Ill. Rev. Stat. 1991, ch. 144, par. 3020(f)) [110 ILCS 947/20(f)].

5) A Complete Description of the Subjects and Issues Involved: ISAC annually reviews its rules in order to respond to market changes and client suggestions, to implement state and federal statutory changes, and to clarify issues that have arisen during the previous year. In addition to making minor technical and grammatical changes throughout this Part, ISAC proposes the following substantive amendments: Please note that a variety of amendments have been made to this Part in response to a number of legislative and regulatory changes at the federal level. The sources include, but are not limited to, final regulations adopted for the Federal Family Education Loan Program at 34 CFR 682, which appeared in the Federal Register on December 12, 1992; additional direction and clarification from the U.S. Department of Education regarding the Higher Education Amendments of 1992 (P.L. 102-325) which is commonly known as "Reauthorization"; the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66); which is commonly known as the Student Loan Reform Act, and the Higher Education Technical Amendments of 1993 (P.L. 103-208), which became effective on December 20, 1993.

The definition of "SLS," the acronym for the Federal Supplemental Loans for Students Programs, is contained in Section 2720.5. That definition has been modified in accordance with the Omnibus Budget Reconciliation Act

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of 1993 (P.L. 103-66), which merged the SLS program into the unsubsidized Federal Stafford Loan program. Section 2720.10(a) has been amended to incorporate changes in the student loan application process. Section 2720.10(b)(5) has been added to ensure that all of our clients are aware of the fact that renewal borrowers remain eligible for ISAC-guaranteed loans. Section 2720.10(f) has been updated to comply with recent changes to annual and aggregate loan limits made by the Technical Amendments of 1993. Section 2720.10(f)(2) now includes a reference to the applicable federal regulation. Section 2720.10(g) has had the references to SLS loans deleted so that it agrees with the change in Section 2720.5. Section 2720.20(a)(1) now requires that lenders wishing to serve as lenders of last resort (LLR) sign separate agreements because the program requirements are slightly different for LLR loans (e.g., one hundred percent reinsurance, LLR loans are not counted in lender default rates, etc.). Section 2720.30(g) has been changed because educational institutions located outside of this state may also apply for eligibility in ISAC-guaranteed loan programs, if they serve Illinois students. Section 2720.35 has been added so that ISAC's rules contain requirements for holders as well as lenders and educational institutions. Section 2720.40(a) has been updated to reflect the common application form used by guarantors across the country. Section 2720.40(c) has been added to outline the procedures used by students wishing to obtain subsidized Stafford loans from lenders of last resort. Section 2720.40(f) has been changed because the standardized common application/promissory note has no place for comakers or cosigners. Section 2720.41(a)(1)(D) has been deleted since its requirements are redundant to eligibility reinstatement provisions contained in ISAC's General Provisions at 23 Ill. Adm. Code 2700.40(a)(1)(A)(2). Section 2720.41(b)(4) has been added since lender of last resort loans are an exception to ISAC's "one-lender" rule. Section 2720.42(a)(1) contains modified time frames to better coordinate the repayment disclosures with the new holder, thereby relieving the originating lender of the obligation to make repayment disclosures prior to the sale of a loan. Section 2720.50(e)(1) now provides for electronically transmitted funds. Additionally, references to SLS loans have been deleted since no new SLS loans can be originated after July 1, 1994. Section 2720.50(e)(2) has been changed so that it complies with new federal late disbursement policies. Section 2720.55(e) has been added so that ISAC rules comply with the federal Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66), which requires that holders pay the U.S. Department of Education an interest rebate fee for all federal consolidation loans. Section 2720.70(a) has been clarified since deceased borrowers cannot request loan forgiveness. Section 2720.70(b) has been amended so that ISAC rules do not conflict with the new federal risk-sharing requirements contained in Section 428(c) of the Higher Education Act, as amended. Section 2720.70(c) has been changed so that ISAC rules comply with federal regulations, which require that lenders seek default reimbursement only on dischargeable bankruptcies and Chapter 11, 12 and 13 bankruptcies, and the 1992 amendments to the Higher Education Act, which require that lenders seek reimbursement on all bankruptcies. Also, the words "collection on"

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have been added since it is the collection activities that are stayed during the pendency of a bankruptcy proceeding and not the debt itself. In Section 2720.70, (d) and (e) have been split since the former outlines what must be certified at the time a default claim is filed and the latter discusses what a lender or holder must have done much earlier in the life of the loan. Section 2720.70(f) has been updated in accordance with the new single common application/promissory note (which will be used for all loan programs) since different types of loans may go into repayment at different times. Section 2720.70(i) has been amended to include a number of collection tools outlined in federal regulations. Section 2720.80(b) has been changed in accordance with the Omnibus Budget Reconciliation Act of 1993, which has decreased the maximum allowable insurance premium from 3 to 1 percent of the principal amount of the loan. Section 2720.80(c) has been updated in accordance with the advent of electronic fund transfers. The amendments to Section 2720.90 are merely technical in nature.

- 6) Will this proposed amendment replace an emergency rule currently in effect? No.
- 7) Does this rulemaking contain an automatic repeal date? No.
- 8) Does this proposed amendment contain incorporations by reference? No.
- 9) Are there any other amendments pending on this Part? No.

10) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a state mandate as defined in Section 3(b) of the State Mandates Act (Ill. Rev. Stat. 1991, ch. 85, par 2203) [30 ILCS 805/3] and does not necessitate a local government to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues.

- 11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Comments may be submitted in writing for a period of 45 days following publication of this notice. Comments should be submitted to:

Ms. Raquel G. Martinez
Compliance Counsel
Illinois Student Assistance Commission
1755 Lake Cook Road
Deerfield, Illinois 60015

- 12) Initial Regulatory Flexibility Analysis: This rulemaking does not affect small businesses.

The full text of the proposed amendments begin on the following page:

ILLINOIS STUDENT ASSISTANCE COMMISSION

NOTICE OF ADOPTED AMENDMENT(S)

TITLE 23: EDUCATION AND CULTURAL RESOURCES
SUBTITLE A: EDUCATION

CHAPTER XIX: ILLINOIS STUDENT ASSISTANCE COMMISSION

PART 2720

FEDERAL FAMILY EDUCATION LOAN PROGRAM (FFELP)

SUBPART A: FEDERAL LOAN PROGRAMS:
THE FEDERAL STAFFORD LOAN PROGRAM, FEDERAL PLUS PROGRAM,
FEDERAL SUPPLEMENTAL LOANS FOR STUDENTS (SLS) PROGRAM,
AND FEDERAL CONSOLIDATION LOAN PROGRAM

Section	Summary and Purpose
2720.5	Definitions
2720.6	Eligibility for ISAC Loan Guarantees
2720.10	Lender Eligibility
2720.20	Educational Institution Lender Eligibility
2720.25	Institutional Eligibility
2720.30	Holder Eligibility
2720.35	Procedures for Obtaining a Guaranteed Loan
2720.40	One-Lender Requirement
2720.41	One-Holder Requirement
2720.42	Procedures for Disbursement and Repayment
2720.50	Federal Consolidation Loan Program
2720.55	Preclaim Assistance
2720.60	Reimbursement Procedures
2720.70	Student Insurance Premium
2720.80	Guarantee Transfers
2720.90	

SUBPART B: ILLINOIS DESIGNATED ACCOUNT PURCHASE PROGRAM (IDAPP)

Section	Summary and Purpose
2720.105	IDAPP Eligible Loans
2720.120	IDAPP Eligible Lenders
2720.130	

SUBPART C: ISAC ORIGINATED LOANS

Section	Summary and Purpose
2720.200	ISAC Originated Consolidation Loans
2720.210	Illinois Opportunity Loan Program (IOP)
2720.220	

2720. App. A Required Activities of Educational Lenders

AUTHORITY: Implementing Section 80 through 175 of the Higher Education Student Assistance Act (Ill. Rev. Stat. 1991, ch. 144, pars. 3080 through 3175) (See P.A. 87-997, effective September 3, 1992) [110 ILCS 947/80 through 175]; Title IV, Part B, of the Higher Education Act of 1965, as amended (20 U.S.C.A. 1071 et seq.); and authorized by Section 20(f) of the Higher Education Student Assistance

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Act (Ill. Rev. Stat. 1991, ch. 144, par. 3020(f)) [110 ILCS 947/20(f)].

SOURCE: Adopted at 3 Ill. Reg. 4, p. 38, effective January 26, 1979; amended at 5 Ill. Reg. 8698, effective August 17, 1981; emergency rule and emergency repealer at 6 Ill. Reg. 7558, 7573, effective June 9, 1982, for a maximum of 150 days; new rules adopted at 6 Ill. Reg. 13799, effective October 25, 1982; old rules repealed at 6 Ill. Reg. 15254, effective December 3, 1982; emergency amendment at 7 Ill. Reg. 9942, effective August 8, 1983, for a maximum of 150 days; codified at 7 Ill. Reg. 13309; amended at 8 Ill. Reg. 876, effective January 9, 1984; amended at 8 Ill. Reg. 7286, effective May 18, 1984; amended at 8 Ill. Reg. 17006, effective September 5, 1984; amended at 9 Ill. Reg. 20796, effective January 1, 1986; amended at 11 Ill. Reg. 3181, effective January 29, 1987; emergency amendment at 11 Ill. Reg. 13669, effective August 5, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 14103, effective August 10, 1987; emergency amendment at 11 Ill. Reg. 18370, effective October 23, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 20989, effective January 1, 1988; amended at 12 Ill. Reg. 6971, effective April 1, 1988; amended at 12 Ill. Reg. 11520, effective July 1, 1988; emergency amendment at 12 Ill. Reg. 15221, effective September 15, 1988, for a maximum of 150 days; emergency expired February 12, 1989; amended at 13 Ill. Reg. 2872, effective February 16, 1989; amended at 13 Ill. Reg. 8630, effective July 1, 1989; transferred from Chapter IX, 23 Ill. Adm. Code 1720 (State Scholarship Commission) to Chapter XIX, 23 Ill. Adm. Code 2720 (Illinois Student Assistance Commission) pursuant to P.A. 86-168, effective July 1, 1989, at 13 Ill. Reg. 17855; emergency amendment at 14 Ill. Reg. 4266, effective March 1, 1990 for a maximum of 150 days; amended at 14 Ill. Reg. 10553, effective July 1, 1990; amended at 14 Ill. Reg. 10941, effective July 1, 1990; emergency amendments at 15 Ill. Reg. 18769, effective January 1, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 4060; effective February 28, 1992; amended at 16 Ill. Reg. 11224, effective July 1, 1992; emergency amendments at 17 Ill. Reg. 2055, effective February 1, 1993, for a maximum of 150 days; amended at 17 Ill. Reg. 10506, effective July 1, 1993; amended at 18 Ill. Reg. _____, effective _____, 1994.

SUBPART A: FEDERAL LOAN PROGRAMS:

THE FEDERAL STAFFORD LOAN PROGRAM, FEDERAL PLUS PROGRAM,
FEDERAL SUPPLEMENTAL LOANS FOR STUDENTS (SLS) PROGRAM,
AND FEDERAL CONSOLIDATION LOAN PROGRAM

Section 2720.6 Definitions

"Academic Year" - For the purposes of this Part, is defined at Section 481(d)(2) of the Higher Education Act, as amended, and at 34 CFR 668.2.

"Co-maker" - One of the two individuals who are joint borrowers on a Federal PLUS Program loan and who are equally liable for repayment of the loan. (See 34 CFR 200.)

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"Consolidation" - A federal program which allows borrowers to consolidate a number of loans into one, as authorized by Section 428C of the HEA, as amended.

"Default Status" - The failure of a borrower to make an installment payment when due or to meet terms of the Note, provided this failure persists for 180 days for a loan repayable in monthly installments or 240 days for a loan repayable in less frequent installments under circumstances where ISAC finds it reasonable to conclude the borrower no longer intends to honor the repayment obligation. Such circumstances include, but are not limited to, a refusal to make payment by the borrower.

"Delinquency" - For the purposes of this Part, is defined at 34 CFR 682.411(b).

"Disbursement" - The process of transferring funds from the Lender to the borrower. Educational Institutions participate in the Disbursement process.

"Educational Lender" - An educational institution which meets the Lender eligibility criteria outlined in Section 2720.25.

"Endorser" - A signer of a promissory note who is secondarily liable for the repayment of a loan obligation.

"Federal Regulations" - Regulations promulgated by ED and codified at 34 CFR 668 and 682.

"FFELP" - The acronym for the Federal Family Education Loan Program, as authorized by Section 421 of the Higher Education Act, as amended, including subsidized and unsubsidized Federal Stafford loans, Federal PLUS loans, Federal SLS loans, and Federal Consolidation loans.

"Full-time Student" - For the purposes of this Part, is defined at 34 CFR 682.200.

"Half-time Student" - For the purposes of this Part, is defined at 34 CFR 682.200.

"Holder" - An organization authorized by ED and ISAC to purchase or retain possession of Guaranteed Loans. These organizations operate as commercial and Educational Lenders or secondary markets and may purchase ISAC-Guaranteed Loans from approved Lenders. ISAC's Illinois Designated Account Purchase Program (IDAPP) and the Student Loan Marketing Association (SLMA) are examples of approved Holders.

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"IDAPP" - The acronym for ISAC's Illinois Designated Account Purchase Program as authorized by the Education Loan Purchase Program Law. (Ill. Rev. Stat. 1991, ch. 144, pars. 3125 through 3175) (See P.A. 87-997, effective September 3, 1992) [110 ILCS 94/125 through 170].

"Lender" - Defined by Section 435 of the Higher Education Act of 1965, as amended. (20 U.S.C.A. 1085)

"PLUS" - A Federal program which provides loans to Parents of certain students, as authorized by Section 428B of the Higher Education Act of 1965, as amended (20 U.S.C.A. 1078-2) and Sections 80 through 175 of the Higher Education Student Assistance Act. (Ill. Rev. Stat. 1991, ch. 144, pars. 3080 through 3175) (See P.A. 87-997, effective September 3, 1992) [110 ILCS 94/80 through 175].

"SLS" - The acronym for the Federal Supplemental Loans for Students Program, as authorized by Section 428A of the Higher Education Act of 1965, as amended (20 U.S.C.A. 1078-1) and Sections 80 through 175 of the Higher Education Student Assistance Act. (Ill. Rev. Stat. 1991, ch. 144, pars. 3080 through 3175) (See P.A. 87-997, effective September 3, 1992) [110 ILCS 94/80 through 175] No new SLS Loans shall be made for periods of enrollment beginning on or after July 1, 1994. The SLS Program has been merged into the unsubsidized component of the Stafford Loan Program and will no longer exist as a separate program. All conditions and benefits applicable to existing SLS Loans will continue for those loans. Also, to the extent that current unsubsidized Stafford Loans have different conditions and benefits than under the merged program, those loans retain those different conditions and benefits. (See P.L.103-66, commonly known as the Omnibus Budget Reconciliation Act of 1993.)

"Stafford" - Subsidized and unsubsidized Federal Stafford Loans to eligible borrowers, as authorized by Sections 427, 428 and 428H of the Higher Education Act, as amended (20 U.S.C.A. 1078) and Sections 80 through 175 of the Higher Education Student Assistance Act (Ill. Rev. Stat. 1991, ch. 144, pars. 3080 through 3175) (See P.A. 87-997, effective September 3, 1992) [110 ILCS 94/80 through 175].

(Source: Amended at 18 Ill. Reg. _____, effective _____, 1994)

Section 2/20.10 Eligibility for ISAC Loan Guarantees

- a) Applicants may apply for a loan guarantee by submitting a common an ISAC ED-approved application form.
- b) Eligibility requirements for Guaranteed Loans are established by Federal Regulations, however, the borrower must be a Resident of

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the State of Illinois or a parent borrowing on behalf of a student enrolled at an approved institution located in Illinois. For purposes of this Part, a borrower is considered eligible if the Applicant:

- 1) reports an Illinois address as his/her permanent home address and is Enrolled on at least a half-time basis at an approved postsecondary Institution; or
 - 2) is Enrolled on at least a half-time basis at an approved postsecondary Institution located in Illinois; or
 - 3) is a qualified Parent or legal guardian who reports an Illinois address as his/her permanent home address and is borrowing through the Federal PLUS program on behalf of a dependent undergraduate student who is Enrolled at least half-time at an approved postsecondary Institution; or
 - 4) is a qualified parent or legal guardian borrowing through the Federal PLUS program on behalf of a dependent undergraduate student who is Enrolled on at least a half-time basis at an approved postsecondary Institution located in Illinois; or
 - 5) had previously received an ISAC-guaranteed loan, despite the fact that s/he did not or no longer meets the residency requirements of this subsection.
- c) The student must be Enrolled, or accepted for enrollment, at an approved postsecondary Institution which has certified the Applicant as eligible for a Guaranteed Loan.
 - d) An Applicant shall not be disqualified for a loan guarantee by ISAC if the Lender, the Institution, the student, and the borrower meet the eligibility requirements of Title IV, Part B, of the Higher Education Act of 1965, as amended (20 U.S.C.A. 1071 et seq.), of Federal Regulations and of this Subpart.
 - e) No loan guarantee shall be issued if such loan would exceed the annual or aggregate amount permitted such borrower for the Academic Year, as specified by Section 428 of the Higher Education Act of 1965, as amended. (See 20 U.S.C.A. 1078.)
 - f) The Institution shall compute a recommended loan amount for each Applicant in accordance with Section 425(a)(1)(C) of the Higher Education Act, as amended. No Guaranteed loan may exceed the Institution's recommended amount.
 - 1) When certifying loan eligibility for an Academic Year which

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will span Academic Levels, the Institution's recommended loan amount shall not exceed the maximum permitted for the Applicant's Academic Level at the time of certification.

Example: A student desires a Federal Stafford Loan for a two semester period of enrollment beginning August 20, 1993 and concluding May 15, 1994. During the fall 1993 Term the student will be a sophomore and during the spring 1994 Term the student anticipates attaining the Academic Level of Junior. Prior to the borrower's successful completion of the fall Term, the Institution's recommended loan amount shall not exceed the \$3,500 loan permitted sophomore borrowers.

- 2) Should a student borrow in excess of the permitted loan maximums, the institution shall terminate the student becomes ineligible student's eligibility for federal financial assistance for that Academic Year. (See Section 484 of the Higher Education Act of 1965, as amended (20 U.S.C.A. 1091) and 34 CFR 668.7(a)(9).)

- g) An applicant who previously received a Federal Stafford, or Federal PLUS or Federal-SLS loan may be eligible for a subsequent loan provided that 211 days have passed from the beginning loan term date indicated on the previous loan request to the beginning loan term date on the new loan request. The beginning loan term date must coincide with the start of a Term that is published in the school catalog or official class schedule.

(Source: Amended at 18 Ill. Reg. _____, effective _____, 1994)

Section 2720.20 Lender Eligibility

a) Lender Agreement

- 1) All approved Lenders must execute an ISAC lender agreement prior to participating in the Federal Stafford, Federal PLUS, Federal SLS or Federal Consolidation loan programs. Lenders wishing to serve as Lenders of last resort are required to sign an additional agreement which includes the provisions of Section 428(j) of the Higher Education Act, as amended.
- 2) Lenders must have received ED approval prior to executing a Lender Agreement.
- 3) The Lender Agreement shall include provisions requiring Lenders to:

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- A) Comply with statutes, Federal Regulations, Rules, and procedures; and
- B) Provide such information as ISAC may request relating to borrower demographics, collection records and other documents ISAC may need to comply with Federal Regulations. (See: Sections 2720.60(a) and 2720.70(c).)
- 4) Lenders and ISAC may agree to electronically transmit and receive data. ISAC shall provide the Lender with program documentation and reasonable technical assistance related to electronic data exchanges. ISAC and the Lender shall agree that the information and data shall be confidential and shall not be used, disclosed, sold or shared for any purpose other than those directly related to the administration of ISAC's Guaranteed Loan programs.
- 5) Termination of the Lender Agreement may be made by either the Lender or ISAC with thirty (30) days written notice. Termination shall not affect any obligations incurred prior to the time such termination becomes effective.
- b) Eligible Lenders shall employ an adequate number of qualified persons to administer its responsibilities under the ISAC Rules. In determining whether a Lender employs an adequate number of qualified persons, ISAC considers the number of students aided, the number of applications evaluated and the amount of funds administered.
- c) In addition to the provision of subsection (a), the Lender Agreement for insurance companies approved as Lenders shall require:
 - 1) advertising and promotional materials consistent with Section 761 of the Illinois Insurance Code (Ill. Rev. Stat. 1991, ch.73, par.761) [215 ILCS 5/149] and 50 Ill. Adm. Code 909; and
 - 2) compliance with Article XXVI of the Illinois Insurance Code (Ill. Rev. Stat. 1991, ch. 73, pars. 1028 through 1041) [215 ILCS 5/421 through 434].
- d) A loan guarantee shall be canceled if the Lender fails to comply with Federal Regulations, statutes, ISAC Rules, or procedures, provided such failure impairs ISAC's ability to recover the expense of reimbursing the Lender for the defaulted loan.
- e) ISAC conducts compliance reviews to determine if approved Lenders are complying with Federal Regulations, statutes and Rules.

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- f) Lenders wishing to participate in ISAC-guaranteed loan programs shall submit an application which shall include, but not be limited to: servicing/secondary market agreements; previous compliance and audit reviews conducted by other guarantors and the Department of Education; documentation relating to the percentage of student loans as compared to other installment loan portfolios; default rates; policy and procedures manuals; promotional materials; a statement relating to previous and anticipated loan volume; and other similar information relating to student loans requested by ISAC to show the Lender's qualifications for participation. Program participation will be determined by an examination of those materials and compliance with federal laws and regulations and state rules and statutes.

(Source: Amended at 18 Ill. Reg. _____, effective _____, 1994)

Section 2720.30 Institutional Eligibility

- a) Institutional eligibility requirements are specified in Federal Regulations. Eligible postsecondary Institutions include universities, colleges, graduate schools, schools of nursing, business, trade, technical, and vocational schools. Correspondence Institutions/programs are not eligible.
- b) Institutions must have executed a Program Participation Agreement with ED in order to participate in ISAC-Guaranteed Loan Programs. (See: 34 CFR 668.12 et seq.)
- c) When an approved Institution has a change of ownership resulting in a change of control, a change of location, or a change of name as defined by Federal Regulations, the Institution's Program Participation Agreement with ED may be terminated. The Institution may have eligibility reinstated by the execution of a new Program Participation Agreement with ED (See e.g.: 34 CFR 600.30 et seq.) and by the submission and approval of a new application for participation with ISAC.
- d) An Institution may not engage in loan origination activities. This prohibition shall not apply if the Institution has an ED-approved Origination Agreement on file with ISAC and the Institution has been approved as an Educational Lender. (See: Section 2720.25 of this Part and 34 CFR 682.601.)
- e) Approved Institutions shall provide ISAC with the current enrollment status of students whom the Institution has certified as eligible borrowers. ISAC shall request enrollment data in accordance with a schedule published on an annual basis.

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- f) Applicant and approved Institutions must demonstrate administrative capability and financial responsibility, as defined by Federal Regulations, in order to begin and to continue participation in ISAC-Guaranteed Loan programs. (See, e.g.: 34 CFR 668.13 et seq.)
- g) Institutions wishing to participate in ISAC-Guaranteed Loan programs shall submit an application which shall include, but not be limited to: documentation from the U.S. Department of Education (ED) and the state in which it operates State-of-illinois demonstrating authorization to offer educational programs; previous audit and accreditation reviews conducted by other guarantors and ED; proof of promotional materials; policy and procedure manuals; documentation relating to default and student withdrawal rates; and other similar information requested by ISAC to show the institution's qualifications for participation. Participation will be decided by an examination of application materials and a determination of compliance with federal laws and regulation and state statutes and rules. Institutions may appeal an administrative decision denying participation or limiting eligibility in accordance with ISAC appeal procedures. (See 23 Ill. Adm. Code 2700.70.) Institutions denied participation shall be eligible to reapply one year from the date of the initial ISAC letter denying eligibility.

- h) Institutions not maintaining the standards of administrative capability or financial responsibility demonstrated in their original applications for participation, or required by Federal Regulations, may be subject to administrative limitation, Suspension or Termination Proceedings. (See 23 Ill. Adm. Code 2790.)

(Source: Amended at 18 Ill. Reg. _____, effective _____, 1994)

Section 2720.35 Holder Eligibility

- a) All approved Holders must execute an ISAC Holder agreement prior to participating in the subsidized and unsubsidized Federal Stafford, Federal PLUS, Federal SLS or Federal Consolidation loan programs.
- b) Holders must have received ED approval prior to executing a Holder agreement.
- c) The Holder agreement shall include provisions requiring Holders to:
- 1) Comply with statutes, Federal Regulations, Rules, and procedures, and
 - 2) Provide such information as ISAC may request relating to borrower demographics, collection records and other documents

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ISAC may need to comply with Federal Regulations. (See: Sections 2720.60(a) and 2720.70(c).)

- d) Holders and ISAC may agree to electronically transmit and receive data. ISAC shall provide the Holder with program documentation and reasonable technical assistance related to electronic data exchanges. ISAC and the Holder shall agree that the information and data shall be confidential and shall not be used, disclosed, sold or shared for any purpose other than those directly related to the administration of ISAC's Guaranteed Loan programs.

- e) Termination of the Holder agreement may be made by either the Holder or ISAC with thirty (30) days written notice. Termination shall not affect any obligations incurred prior to the time such termination becomes effective.

- f) Eligible Holders shall employ an adequate number of qualified persons to administer its responsibilities under the ISAC Rules and Federal Regulations. In determining whether a Holder employs an adequate number of qualified persons, ISAC considers the number of students aided, the number of applications evaluated and the amount of funds administered.

- g) In addition to the provisions of subsection (c), the Holder agreement for insurance companies approved as Holders shall require:

- 1) advertising and promotional materials consistent with Section 761 of the Illinois Insurance Code (Ill. Rev. Stat. 1991, ch. 73, par. 761) [215 ILCS 5/149] and 50 Ill. Adm. Code 909, and

- 2) compliance with Article XXVI of the Illinois Insurance Code (Ill. Rev. Stat. 1991, ch. 73, pars. 1028 through 1041) [215 ILCS 5/421 through 434].

- h) A loan guarantee shall be canceled if the Holder fails to comply with Federal Regulations, statutes, ISAC Rules, or procedures, provided such failure impairs ISAC's ability to recover the expense of reimbursing the Holder for the defaulted loan.

- i) ISAC conducts compliance reviews to determine if approved Holders are complying with Federal Regulations, statutes and Rules.

- j) Holders wishing to participate in ISAC-guaranteed loan programs shall submit an application which shall include, but not be limited to: servicing/secondary market agreements; previous compliance and audit reviews conducted by other guarantors and the Department of Education; documentation relating to the percentage of student loans

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as compared to other installment loan portfolios; default rates; policy and procedures manuals; promotional materials; a statement relating to previous and anticipated loan volume; and other similar information relating to student loans requested by ISAC to show the Holder's qualifications for participation. Program participation will be determined by an examination of those materials and compliance with federal laws and regulations and state rules and statutes.

(Source: Added at 18 Ill. Reg. _____, effective _____, 1994.)

Section 2720.40 Procedures for Obtaining a Guaranteed Loan

- a) Borrowers who are eligible for a loan guarantee in accordance with Section 2720.10 are issued a notice of guarantee/disclosure statement. All promissory notes must be in a form furnished or approved by ISAC ED. No alteration or substitution may be used.

- b) All loans are made at the Lender's discretion. When a Lender rejects a borrower's application/promissory note, the Lender shall issue a notice of non-acceptance Notice of Non-acceptance form to the borrower.

- c) Lender of last resort requirements

- 1) An Applicant who is eligible for a subsidized Stafford loan guarantee pursuant to Section 2720.10 of this Part and who has received two notices of non-acceptance can request that ISAC make a referral to a lender of last resort provided the Applicant:

- A) submits a written request for a Lender of last resort loan referral to ISAC, which is accompanied by two notices of non-acceptance issued by ISAC-approved Lenders;

- B) receives loan counseling information specifically designed to benefit an Applicant seeking a Lender of last resort loan; and

- C) attends an ISAC-approved Institution.

- 2) ISAC will refer Applicants to Lenders of last resort or will advise them that they do not meet the eligibility requirements of Section 2720.10 of this Part within 60 days.

- 3) ISAC will act as a Lender of last resort or will refer the Applicant to the Student Loan Marketing Association if it

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cannot refer the Applicant to a Lender of last resort willing to make a subsidized Stafford loan within 60 days.

1)----Should an Applicant be unable to secure an ISAC-Guaranteed Loan from an approved Lender, ISAC shall refer the Applicant to a Lender who has indicated a willingness to issue a Guaranteed Loan;

2)----An Applicant must submit to ISAC a written request for a Lender referral. The request must include copies of three written notifications from approved lenders that indicate a refusal to approve a loan application;

de) The availability of an ISAC-Guaranteed Loan shall not be conditioned upon the purchase of credit life, life, accident, health, or other forms of insurance.

ed) The application/promissory note must be signed in ink. Signature stamps shall not be used.

fe) At the Lender's discretion and in accordance with federal regulations, Co-makers may be used for PLUS loans and Endorsers may be used for SLS loans.

1)----Where two Parents or legal guardians reside in the same household, and the Parent or Guardian applying for a Federal PLUS loan guarantee is not the larger wage earner of the two, the Parent or legal guardian who is the larger wage earner must co-make the loan. This requirement shall not apply if under current criteria employed by the Lender, the Applicant would be considered eligible for an unsecured loan of the same amount from such institution. The Lender shall not require a co-maker on a Federal SLS loan. At the Lender's option, an endorser may be required on any Federal PLUS or Federal SLS loan;

2)----The Lender shall not require a co-maker or an endorser on an unsubsidized or a subsidized Federal Stafford loan nor accept security for payment thereof;

gf) Lenders shall obtain the names and addresses of at least two references from each loan Applicant. Lenders shall submit the reference data to ISAC when requesting ISAC reimbursement pursuant to Section 2/20.70.

hg) When certifying a borrower eligible for a loan guarantee, the Institution shall provide ISAC a loan disbursement schedule consistent with Section 428G of the Higher Education Act of 1965, as

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amended. (20 U.S.C.A. 1078-7) Should the Institution fail to provide ISAC a disbursement schedule that is consistent with federal law, ISAC shall assign the loan a disbursement schedule that is consistent with Section 428G of the Higher Education Act of 1965, as amended.

(Source: Amended at 18 Ill. Reg. _____, effective _____, 1994)

Section 2720.41 One-Lender Requirement

a) All of a borrower's outstanding ISAC-Guaranteed Loans must be made by the same Lender, notwithstanding the residency requirements of Section 2720.10(b) of this Part.

1) ISAC will issue a loan guarantee to a commercial Lender provided that Lender agrees to make all types of Federal Family Education Loans (FFEL) to the borrower which the borrower requests and is eligible to receive, and

A) the loan is the borrower's first ISAC-Guaranteed Loan;

B) the loan is a subsequent loan and the commercial Lender has issued all of the borrower's previous ISAC-Guaranteed Loans; or

C) the loan is a subsequent loan and the commercial Lender holds or has purchased all outstanding ISAC-Guaranteed Loans for that borrower from previous commercial lender(s) or ISAC, in accordance with Section 2720.42 of this Part; or

B)----the loan is a subsequent loan where the borrower has repaid, in whole or in part, six (6) consecutive payments on a loan that had previously been defaulted and the commercial lender has purchased the defaulted loan from ISAC;

2) ISAC will issue a loan guarantee to an Educational Lender provided that Lender agrees to make all types of FFEL to the borrower which the borrower requests and is eligible to receive, and

A) the Lender is an educational Institution at which the borrower is currently Enrolled, and

B) the borrower has previously made a good faith effort to obtain a loan from a commercial Lender pursuant to federal regulations. (See 34 CFR 682.601.)

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b) The requirements of this Section shall not apply if:

- 1) the outstanding loans are held by a Lender which has been either declared insolvent by a regulatory agency, has terminated its agreement with ISAC, or has withdrawn from all FFEL programs.
- 2) the borrower informs ISAC, in writing, that s/he is dissatisfied with the previous Lender's performance and requests that subsequent loans be issued by a different Lender.

3) the borrower is requesting a subsequent loan and the Lender has made a previous ISAC-Guaranteed Loan to that borrower for that loan program with a guarantee date prior to July 1, 1993.

4) the borrower's outstanding loan(s) was made in accordance with Section 2720.40(c) of this Part, by a Lender of last resort.

(Source: Amended at 18 Ill. Reg. _____, effective _____, 1994)

Section 2720.42 One-Holder Requirement

a) All of a borrower's outstanding ISAC-Guaranteed Loans must be sold by a Lender to the same Holder.

1) If the Lender has sold any of a borrower's previous ISAC-Guaranteed subsidized or unsubsidized Federal Stafford Loan(s) or Federal SLS Loan(s) to an approved Holder, the Lender shall sell all subsequent loans to the same Holder by no later than 90 days prior to the scheduled commencement of repayment of principal and interest, or 60 from the borrower's last date of attendance or 180 days following the last disbursement, whichever occurs later; or in the event of untimely notification to the Lender of a student's change in enrollment status, no later than 45 days after the Lender became aware that the student ceased to be enrolled on at least a Half-time basis. (See Section 2720.130(d).)

2) Subsidized Federal Stafford Loans, unsubsidized Federal Stafford Loans and Federal SLS Loans made for loan periods within the same Academic Year must be sold simultaneously.

3) If the Lender has sold the Applicant's previous ISAC-Guaranteed Federal PLUS Loans to an approved Holder, the Lender shall sell each subsequent Federal PLUS Loan for that borrower to the same Holder by no later than the ending loan term date for that loan; or in the case of a late

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disbursement, the subsequent loan must be sold within 45 days following disbursement.

b) Failure to sell the renewal loan by the deadline shall result in the loss of guarantee.

1) A guarantee may be reinstated if, within 90 days after identifying a loan in violation of subsections (a)(1), (a)(2) or (a)(3) above, the Lender initiates the sale of the loan to the eligible Holder who purchased the Applicant's previous loan(s).

2) Initiation of the sale procedure within 90 days will retroactively reinstate the guarantee to the date the guarantee was lost due to a violation of subsections (a)(1), (a)(2) or (a)(3) above, provided no other violation of federal regulation or State rule exists.

3) Failure to initiate the sale of the loan within 90 days after identifying the violation will result in a permanent loss of guarantee for that loan. Failure to ultimately sell the loan to the Holder will also result in a permanent loss of guarantee for that loan.

c) The requirements of this Section shall not apply if:

1) the outstanding loans are held by a Holder which has been either declared insolvent by a regulatory agency, has terminated its agreement with ISAC, or has withdrawn from all FFEL programs.

2) the borrower informs ISAC, in writing, that s/he is dissatisfied with the previous Holder's performance and requests that subsequent loans be sold to a different Holder.

(Source: Added at 18 Ill. Reg. _____, effective _____, 1994)

Section 2720.50 Procedures for Disbursement and Repayment

a) Disbursement and repayment procedures are specified in Federal Regulations.

b) Prior to Disbursement, the borrower(s) shall execute a completed application/promissory note(s) for the principal and interest on the loans. The Lender shall retain the original copy of the application/promissory note.

c) The Lender shall transmit to ED any and all statements and reports

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necessary to obtain federal interest payments on the borrower(s)' behalf. The Lender shall not collect or attempt to collect from the borrower(s) or ISAC any portion of the interest on the loan which is payable by ED.

d) Except for loans pursuant to Section 2720.55, the Lender shall not disburse the proceeds of any loan on the borrower(s)' behalf unless and until the Lender shall have received from ISAC evidence of a guarantee. The Lender shall inform ISAC of all disbursement dates through submissions of the Lender manifest/insurance premium invoice system.

e) Federal Stafford, and Federal PLUS and Federal SLS loan proceeds shall be transmitted directly to the Institution.

1) Federal Stafford and Federal SLS loan checks or electronically transmitted funds shall be payable to the student borrower unless the borrower has authorized, in writing, a co-payable loan check. Federal PLUS loan checks shall be co-payable or sent via EFT to the Institution and the parent borrower.

2) If the proceeds have not been disbursed to the borrower within ninety sixty days after the conclusion of the Term for which the loan was intended, the loan guarantee will be canceled. ISAC approval is required prior to disbursement. Factors to be considered by ISAC in evaluating the borrower's Disbursement request include whether the delay in Disbursement was avoidable by the borrower, whether the borrower was familiar with the loan application process through prior ISAC borrowing, whether the borrower had difficulty locating a Lender willing to issue a loan, and other extenuating circumstances (e.g., death in the borrower's family).

3) If the borrower has withdrawn from enrollment and Federal Regulations require the Institution to submit a refund to the Lender, either electronically or the refund shall be in the form of a check payable to the Lender on behalf of the borrower. The Institution shall provide simultaneous written notice to the student of the refund.

A) If the Institution fails to issue a timely refund, as defined by Federal Regulations, the Institution shall pay penalty interest.

B) The penalty interest shall equal the total amount of interest and special allowance generated by the principal value of the refund amount. The penalty interest shall be computed from the date the refund was

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due until the date the refund was issued.

C) The penalty interest shall be paid to the Lender or subsequent Holder.

f) The borrower(s) shall have the right to prepay without penalty the whole or any part of a loan guaranteed hereunder. Unless the borrower requests otherwise, in writing, any prepayment made thereon shall be credited wholly to the principal.

g) The Lender or Holder shall notify the borrower of the date on which the repayment period begins no later than 120 days after the borrower has left the eligible institution. The Lender or Holder shall send a repayment schedule and disclosure statement to a FFELP borrower no less than 60 days nor more than 240 days before the first payment on the loan is due from the borrower.

h) The Lender or Holder shall notify ISAC of payment in full or prepayment in full by the borrower.

i) In accordance with Federal Regulations, the Lender or Holder may extend the maturity date of any note. If the Lender or Holder agrees to extend said note, then the borrower(s) must execute a forbearance agreement. A forbearance agreement may be approved for a period of up to one year at a time.

j) Lenders may exercise administrative forbearances, which do not require the agreement of the borrower, as authorized by Section 428(c)(3)(D) of the Higher Education Act of 1965, as amended, and by Federal Regulations.

k) Borrowers are entitled to deferments, which extend the maturity date of any note(s), under conditions established by Federal Regulations. The borrower(s) shall be responsible for submitting to the Lender a completed deferment agreement and any corresponding documentation.

l) ISAC provides Lenders with the forms necessary for servicing their Guaranteed Loan portfolio (e.g., deferment forms, forbearance forms). With advance ISAC approval, Lenders may use non-ISAC forms. ISAC shall approve the use of alternative forms provided the alternative form is FD-approved and is compatible with ISAC's data processing requirements.

m) No note shall be sold or transferred by the Lender except to an ISAC-approved Lender, an ISAC-approved Holder, or ISAC.

(Source: Amended at 18 Ill. Reg. _____, effective _____, 1994)

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Section 2720.55 Federal Consolidation Loan Program

- a) ISAC shall guarantee Federal Consolidation loans pursuant to Section 428C of the Higher Education Act of 1965, as amended. (20 U.S.C.A. 1078-3)
- b) Lenders may make Federal Consolidation loans provided participation in the consolidation loan program is authorized by the Lender Agreement. (See: Section 2720.20(a).)
 - 1) ISAC shall initially authorize a Lender to issue no more than \$5,000,000 in guaranteed Federal Consolidation loans.
 - 2) A Lender may receive additional increments of lending authority provided an ISAC compliance review indicates the Lender is complying with Federal Regulations, statutes and Rules. (See: Section 2720.20(f).)
- c) All applications and promissory notes ~~and disclosure statements~~ shall be in a form furnished or approved by ISAC ~~ED~~. Lenders shall report to ISAC when a consolidation loan is made.
- d) Lenders shall request preclaim assistance and reimbursement on consolidation loans in accordance with Sections 2720.60 and 2720.70.
- e) Lenders shall pay the U.S. Department of Education all fees required by Section 428C(f) of the Higher Education Act, ~~as amended, for Consolidation loans made on or after October 1, 1993.~~

(Source: Amended at 18 Ill. Reg. _____, effective _____, 1994)

Section 2720.70 Reimbursement Procedures

- a) If a borrower dies or becomes permanently and totally disabled, the Lender or Holder shall request reimbursement from ISAC within 60 days from the date the Lender or Holder receives a completed request for loan cancellation or forgiveness, ~~of the Lender's receipt of the borrower's loan cancellation request.~~
- b) Requests for default reimbursement must be submitted to ISAC no earlier than 180 days after the first date of Delinquency and no later than 270 days after the first date of Delinquency. The Lender or Holder shall be reimbursed, in accordance with Federal Regulations and the Higher Education Act of 1965, as amended. On Federal PLUS loans all co-makers must meet the default criteria contained in Federal Regulations.
- c) The Lender or Holder must request ISAC reimbursement for a

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- bankruptcy claim in accordance with Federal Regulations and the Higher Education Act of 1965, as amended. (See, e.g., 34 CFR 682.402.) The request for reimbursement must be submitted within 30 days of the Lender's or Holder's receipt of notice that collection on the debt is stayed. A copy of the restraining order and the appropriate papers must be included. On Federal PLUS loans, all co-makers must meet the bankruptcy criteria.
 - de) Prior to reimbursement, the Lender or Holder must certify compliance with federal due diligence requirements and subsection (f) ~~(h)~~.
 - e) Prior to reimbursement, the Lender or Holder must have remitted the insurance premium established by Section 2720.80.
 - f) The Lender or Holder shall forward to ISAC any payments made by or on behalf of the borrower after default reimbursement and shall advise ISAC of any subsequent information received concerning the borrower. Prior to reimbursement, all original notes ~~or certified, true and exact copies of original notes~~ must be properly endorsed and submitted to ISAC. If the notes have been erroneously stamped "Paid in Full", or lost, the Lender or Holder shall execute a hold harmless agreement with ISAC.
 - ge) No fee or charge to the borrower, other than the maximum interest rate prescribed by ED and the collection charges outlined in Section 682.202 (f) and (g) of Federal Regulations, including the student insurance premium, and the federal loan origination fee, shall be contracted for or received by the Lender.
 - hf) The Lender or Holder shall make a proper collection effort in accordance with acceptable practices of prudent lending institutions including, but not limited to, the collection activities required by Federal Regulations. (See, e.g., 34 CFR 682.411.)
 - ig) ISAC shall collect the outstanding amount on the reimbursed Guaranteed Loan. If the borrower refuses to retire the debt, ISAC shall follow the requirements of Federal Regulations. ~~It shall assign the account to a licensed collection agency. (See 34 CFR 682.410.)~~
 - jh) Should a borrower refuse to retire the debt, ISAC shall direct the State Comptroller to offset any payment from the State Treasurer to the borrower. The funds offset shall be remitted to ISAC and credited against the debt.
- 1) All offsets shall be processed in accordance with 74 Ill. Adm. Code 285.

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- 2) ISAC shall not direct an offset if the borrower has maintained a satisfactory repayment record. (See: 23 Ill. Adm. Code 2700.40(a)(1).)
- 3) ISAC shall notify a borrower of the possibility of an offset no less than fifteen days prior to the first offset. ISAC shall not provide additional notice of subsequent offsets for the same debt. Should the borrower dispute the debt, an appeal must be filed within fifteen days of the date of the notice. Appeals will be processed in accordance with 23 Ill. Adm. Code 2700.70. If the requested relief is granted, the funds offset shall be returned to the borrower.
- 4) Funds eligible to be offset include, but are not limited to, state income tax refunds and the wages of state employees.

(Source: Amended at 18 Ill. Reg. _____, effective _____, 1994)

Section 2720.80 Student Insurance Premium

- a) ISAC charges each borrower an insurance premium on each Guaranteed Loan. The premium is collected by the Lender and must be remitted to ISAC by the tenth day of the second month following Disbursement.
- b) The amount of the premium collected on each loan shall be no greater than the maximum permitted by the Higher Education Act, as amended, 3-percent-of-the-principal-amount-of-the-loan. The exact amount of the insurance premium shall be computed by ISAC and disclosed to the borrower on the notice of guarantee/disclosure statement. The rate of the insurance premium shall be determined by resolution of the Commission. When establishing the rate of the insurance premium, the factors to be considered by the Commission include: the solvency of the Student Loan Revolving Fund, projected application volume, and the timeliness of payments from ED pursuant to the Higher Education Act of 1965, as amended. (20 U.S.C.A. 1071 et seq.)
- c) No refunds of insurance premiums shall be made to the borrower after the loan check has been endorsed by the borrower or, for electronically transmitted funds, the funds have been applied to the individual student's account from the institution's restricted account, unless the loan check is returned uncashed to the lender or returned electronically to the lender, or the loan is repaid in full within 120 days of disbursement.
- d) The insurance premiums shall be deposited in the Student Loan Revolving Fund. In accordance with Federal Regulations, such proceeds may only be used to reimburse lenders for defaulted Guaranteed Loans, to pay for the administrative expenses of ISAC or

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to pay the reinsurance fee assessed by the Department of Education.
(Source: Amended at 18 Ill. Reg. _____, effective _____, 1994)

Section 2720.90 Guarantee Transfers

- a) ISAC may transfer loan guarantees to or from another guarantor, as specified in Section 428(b)(2)(E) of the Higher Education Act of 1965 (HEA), as amended (20 USC 1078(b)), provided:
- 1) the loan guarantees are insured (see Section 428(b) of the HEA);
 - 2) an agreement has been entered into between ISAC and
 - A) the other guaranty guarantor agency,
 - B) an agent of the guaranty guarantor agency, who has been approved by the U.S. Secretary of Education, or
 - C) the U.S. Secretary of Education or an agent thereof;
 - 3) the transfer has been approved by the Holder of the loan.
 - b) Notwithstanding any provision of Section 2720.42, regarding all loans being held by one Holder, a loan guarantee may be transferred to ISAC from another guaranty guarantor agency.
 - c) Notwithstanding any provisions of Section 2720.10, regarding residency requirements for eligible borrowers, a loan guarantee may be transferred to ISAC from another guaranty guarantor agency.

(Source: Amended at 18 Ill. Reg. _____, effective _____, 1994)

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- 1) The Heading of the Part: General Provisions
- 2) Code Citation: 23 Ill. Adm. Code 2700
- 3) Section numbers:
- | | |
|---------|---------|
| 2700.20 | Amended |
| 2700.30 | Amended |
| 2700.40 | Amended |
| 2700.50 | Amended |
| 2700.60 | Amended |

4) Statutory Authority: Implementing the Higher Education Student Assistance Act (Ill. Rev. Stat. 1991, ch. 144, par. 3001 et seq.) (See P.A. 87-997, effective September 3, 1992) [110 ILCS 947]; Title IV of the Higher Education Act of 1965, as amended (20 U.S.C.A. 1070 et seq.) as amended by P.L. 102-325; and authorized by Section 20(f) of the Higher Education Student Assistance Act (Ill. Rev. Stat. 1991, ch. 144, par. 3020(f)) (See P.A. 87-997, effective September 3, 1992) [110 ILCS 947/20(f)].

5) A Complete Description of the Subjects and Issues Involved: ISAC annually reviews its rules in order to respond to market changes and client suggestions, to implement state and federal statutory changes, and to clarify issues that have arisen during the previous year. In addition to making minor technical and grammatical changes throughout this Part, ISAC proposes the following substantive amendments: The words "gift assistance" are defined in this part and have a very specific meaning (i.e., scholarships and grants that do not have to be repaid). The phrase "student assistance programs" applies not only to gift assistance programs but includes the myriad of loan programs as well. The use of these terms has been modified throughout this Part to more accurately reflect their true meaning. In Section 2700.20, the term "concurrent registration" has been simplified for the convenience of our clients, and the definition of "guaranteed loans" has been updated to include subsidized and unsubsidized Stafford loans. In Section 2700.30(a), the word "ISAC" has been inserted in appropriate places to identify the type of contract that must be executed before an institution can participate in ISAC gift assistance programs and to distinguish it from the agreement that must be signed with the U.S. Department of Education for participation in federal student assistance programs. Section 2700.30(b) has been amended to illustrate the fact that institutions are required to maintain the same standards presented in their initial applications in order to continue their eligibility in ISAC gift assistance programs. Such standards include offering programs with transferable credits and maintaining an adequate number of qualified staff persons to administer financial aid programs. Section 2700.30(i)(3) has been changed to parallel the revision in subsection (b). All institutions participating in federal student assistance programs must have periodic audits performed to meet federal

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financial responsibility standards. Section 2700.30(i)(5) has been added to ensure that ISAC has access to those same financial statements when it reviews new applications for participation in ISAC-administered student gift assistance programs. Section 2700.30(k) has been added to reiterate the fact that institutions must meet federal administrative capability and financial responsibility standards to begin and to continue participation in ISAC-administered student assistance programs. Section 2700.40(a)(1)(A) has been amended to grant students eligibility for ISAC-guaranteed loans when they have reinstated their eligibility for Title IV student assistance programs, and have rehabilitated or made repayment arrangements on previously defaulted loans. Section 2700.40(a)(1)(B) has been added to codify federal requirements which enable borrowers to avail themselves of these default reduction measures on only one occasion during the life of a loan. Section 2700.40 (g) has been changed to more accurately reflect the budget process in Illinois which includes not only an appropriation by the General Assembly but also approval by the Governor. Section 2700.50(f) was added last year to require that institutions perform Illinois residency verifications on independent students who were not enrolled in an Illinois Institution during the previous school year. This requirement was intended to ensure that only established Illinois residents receive state financial aid dollars. The 1994-95 Free Federal Application for Federal Student Aid (FAFSA) contains a question specifically asking the date on which a student became a resident of the state in which he or she resides (which can be used for residency verification purposes). Further, ISAC is satisfied that a sufficient number of controls have been put into place by institutions to forestall any problems that had previously been identified regarding this issue. Based on client input, it was determined that the balance between protecting the state's fiscal interests and minimizing the administrative burden on schools could be best achieved by returning the residency verification requirement to the way it was prior to last year's addition (i.e., checking residency if an applicant is chosen for verification for federal student assistance). Therefore, that subsection has been deleted. Section 2700.50(g)(2) and (3) have been combined at the suggestion of our clients to clarify the fact that a state or federal tax return can be used in lieu of, rather than in addition to, the other items in the list to establish Illinois residency. Finally, Section 2700.50(g)(2)(J) has been added as an acceptable document with which to establish residency because it is issued by an Illinois agency.

- 6) Will this proposed amendment replace an emergency rule currently in effect? No.
- 7) Does this rulemaking contain an automatic repeal date? No.
- 8) Does this proposed amendment contain incorporations by reference? No.
- 9) Are there any other amendments pending on this Part? No.

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10) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a state mandate as defined in Section 3(b) of the State Mandates Act (Ill. Rev. Stat. 1991, ch. 85, par. 2203) [30 ILCS 805/3] and does not necessitate a local government to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Comments may be submitted in writing for a period of 45 days following publication of this notice. Comments should be submitted to:

Ms. Raquel G. Martinez
Compliance Counsel
Illinois Student Assistance Commission
1755 Lake Cook Road
Deerfield, Illinois 60015

12) Initial Regulatory Flexibility Analysis: This rulemaking does not affect small businesses.

The full text of the proposed amendments begin on the following page:

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NOTICE OF PROPOSED AMENDMENTS

TITLE 23: EDUCATION AND CULTURAL RESOURCES

SUBTITLE A: EDUCATION

CHAPTER XIX: ILLINOIS STUDENT ASSISTANCE COMMISSION

PART 2700

GENERAL PROVISIONS

Section
2700.20
2700.30
2700.40
2700.50
2700.60

Definitions
General Institutional Eligibility Requirements
General Applicant Eligibility Requirements
Determining Applicant Eligibility
Audits and Investigations

AUTHORITY: Implementing the Higher Education Student Assistance Act (Ill. Rev. Stat. 1991, ch. 144, par. 3001 et seq.) (See P.A. 87-997, effective September 3, 1992) [110 ILCS 947]; Title IV of the Higher Education Act of 1965, as amended (20 U.S.C.A. 1070 et seq.) as amended by P.L. 102-325; and authorized by Section 20(f) of the Higher Education Student Assistance Act (Ill. Rev. Stat. 1991, ch. 144, par. 3020(f)) (See P.A. 87-997, effective September 3, 1992) [110 ILCS 947/20(f)].

SOURCE: Adopted at 9 Ill. Reg. 20783, effective January 1, 1986; amended at 11 Ill. Reg. 3167, effective January 29, 1987; amended at 11 Ill. Reg. 14099, effective August 10, 1987; amended at 12 Ill. Reg. 11510, effective July 1, 1988; amended at 13 Ill. Reg. 8626, effective July 1, 1989; transferred from Chapter IX, 23 Ill. Adm. Code 1700 (State Scholarship Commission) to Chapter XIX, 23 Ill. Adm. Code 2700 (Illinois Student Assistance Commission) pursuant to P.A. 86-168, effective July 1, 1989, at 13 Ill. Reg. 17854; amended at 14 Ill. Reg. 10538, effective July 1, 1990; amended at 16 Ill. Reg. 11206, effective July 1, 1992; amended at 17 Ill. Reg. 10541, effective July 1, 1993; amended at 18 Ill. Reg. _____, effective _____, 1994.

Section 2700.20 Definitions

"Academic Level" - The classification of a student as freshman, sophomore, junior, senior, or graduate student.

"Academic Year" - A twelve month period of time, normally from August or September of any year through August or September of the ensuing year.

"Applicant" - Any individual who requests ISAC consideration for a scholarship, grant, tuition waiver, or guaranteed loan.

"Chargeback" - Payment of tuition by the community college district of a student's residence to the community college district of a student's attendance. (Ill. Rev. Stat. 1991, ch. 122, par. 106-2.)

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[110 ILCS 805/6-2].

"Citizen" - One who, under the Constitution and laws of the United States, is a native-born or naturalized citizen of the United States of America.

"Commission" - The nine member Illinois Student Assistance Commission created by Section 15 of the Higher Education Student Assistance Act. (Ill. Rev. Stat. 1991, ch. 144, par. 3015) (See P.A. 87-997, effective September 3, 1992) [110 ILCS 947/15].

"Concurrent Registration" - The simultaneous contemporaneous maintenance of enrollment at two or more institutions.

"Consortium Agreement" - The written agreement between an institution eligible to participate in any of the programs administered by the Illinois Student Assistance Commission (as defined in Section 2700.30 and subsequent Parts of the ISAC Rules) and another institution whereby the second institution provides all or part of the education program of students enrolled in the eligible institution. ISAC reserves the right, after review of the agreement, to make the final decision regarding the amount, if any, and the destination of final Gift Assistance gift-assistance payment(s).

"Dependent Student" - A scholarship, loan or grant applicant or recipient who is not classified as an Independent Student.

"ED" - The acronym for the United States Department of Education.

"Eligible Noncitizen" - For the purposes of these Rules, eligible noncitizen is defined as noncitizens eligible for federal student assistance pursuant to Section 484 of the Higher Education Act of 1965, as amended. (See 20 U.S.C.A. 1091.)

"Enrolled" - The status of a student who has completed the institution's registration requirements and is attending classes.

"Executive Director" - The chief executive officer of ISAC.

"Foreign Missionary" - An individual who is assigned duty outside of the United States by an organization that engages in educational, philanthropic, humanitarian or altruistic works. The missionary organization must be exempt from the payment of federal taxes and must have been engaged in placing Foreign Missionaries for at least five years. Examples of such missionary organizations include, but are not limited to, the following: Peace Corps, Evangelical Alliance Mission, etc.

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"Full-time Student" - An individual enrolled for twelve or more credit hours, for either a semester or quarter term.

"Gift Assistance" - Student assistance funds in the form of a scholarship, grant or tuition waiver, including but not limited to, federal, state, institutional and private aid.

"Good Moral Character" - An applicant is of good moral character if the applicant will benefit from postsecondary instruction and is allowed to enroll at an approved postsecondary institution.

"Guaranteed Loans" - Loan assistance through the Federal Family Education Loan Program (FFELP) which includes the subsidized and unsubsidized Federal Stafford Loan, the Federal PLUS Loan, the Federal Supplemental Loans for Students (SLS), and the Federal Consolidation Loan programs.

"Half-time Student" - An individual enrolled for six or more credit hours (but less than twelve credit hours) for either a semester or quarter Term.

"Independent Student" - For the purposes of these Rules, independent student is defined by Section 480 of the Higher Education Act of 1965, as amended by P.L. 102-325. (See 20 U.S.C.A. 1087vv.) A non-independent student is referred to as a Dependent Student.

"Institution" - Unless otherwise qualified, any secondary or postsecondary educational organization which enrolls students who participate in ISAC programs.

"ISAC" - The acronym for the Illinois Student Assistance Commission; the administrative agency created by Section 15 of the Higher Education Student Assistance Act (Ill. Rev. Stat. 1991, ch. 144, par. 3015) (See P.A. 87-997, effective September 3, 1992) [110 ILCS 947/15] to administer the State's student assistance programs in Illinois.

"Mandatory Fees" - The charges assessed by an institution to each and every Full-time student for each term. Application, graduation, laboratory, breakage and add/drop fees are specifically excluded. For the purposes of these Rules, Tuition is not a Mandatory Fee.

"Parent" - For the purpose of these Rules, "Parent" is defined at 34 CFR 668.2.

"Pell Grant" - A Federal Gift Assistance program administered by ED in accordance with Section 411 of the Higher Education Act of 1965, as amended. (See 20 U.S.C.A. 1070a et seq.)

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"Regular School Year" - An eight to nine month period of time which includes two semester Terms or three quarter Terms. The regular school year excludes summer Terms. Programs that begin after April 15 and before August 16 are considered summer Terms.

"Regulations" - Refers to regulations promulgated by ED and codified at 34 CFR 600 et seq.

"Remedial Courses" - The coursework that prepares a student for study at the postsecondary level and must be necessary for the student to pursue the eligible postsecondary program.

"Resident of Illinois" -

A Dependent Student is a Resident of Illinois if the Parent of the dependent-Applicant who is required by the instructions to complete the Free Application for Federal Student Aid (FAFSA), physically resides within the State of Illinois.

An Independent Student is a Resident of Illinois if the Applicant physically resides within the State of Illinois (at the time of application), and has so resided for a period of twelve continuous months immediately prior to September 1 of the Academic Year for which assistance is requested.

When an Applicant does not qualify as a Resident of Illinois under the preceding two subsections and the Applicant is a member of the U.S. Armed Forces or a Foreign Missionary, or is the dependent or the spouse of an individual who is a member of the U.S. Armed Forces or a Foreign Missionary, then the Applicant's residency shall be determined in accordance with this subsection.

An Applicant who is a member of the U.S. Armed Forces will be a Resident of Illinois if the Applicant physically resided in Illinois immediately prior to entering the U.S. Armed Forces, returned (or plans to return) to Illinois within 6 months of the conclusion of enlistment and can demonstrate (pursuant to Section 2/00.50(f) and (g)) that his/her domicile was the State of Illinois throughout such enlistment.

An Applicant who is a Foreign Missionary will be a Resident of Illinois if the Applicant physically resided in Illinois for six continuous months immediately prior to entering missionary service, returned (or plans to return) to Illinois within six months of the conclusion of missionary service, and can demonstrate (pursuant to Section 2/00.50(f) and (g)) that his/her domicile was the State of Illinois throughout such missionary service.

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The dependent-Applicant shall be a Resident of Illinois notwithstanding the Parent(s) temporary physical absence from Illinois provided the Parent(s) would be a Resident of Illinois under the preceding two subsections.

The spouse-Applicant shall be a Resident of Illinois immediately upon physically occupying a dwelling within the State of Illinois provided the Applicant can demonstrate that his/her absence from the State was the result of residing with the spouse during enlistment or missionary service outside of Illinois and that the spouse-Applicant's domicile continues to be the State of Illinois.

"Rules" - The rules of the ISAC codified at 23 Ill. Adm. Code: Subtitle A, Chapter XIX.

"Satisfactory Academic Progress" - An institutional policy which establishes minimum standards of academic performance. For purposes of ISAC-administered programs, the standards must be at least as stringent as those required by ED pursuant to Section 484 of the Higher Education Act of 1965, as amended. (See 20 U.S.C.A. 1091.)

"Term" - A unit of time for student attendance, including, but not limited to, a quarter or semester.

"Tuition" - The charge for instruction assessed by a postsecondary institution.

"Verification" - Procedures implemented by postsecondary institutions to verify the eligibility of Applicants. The procedures are established by 34 CFR 668 et seq. and by these Rules.

(Source: Amended at 18 Ill. Reg. _____, effective _____, 1994)

Section 2/00.30 General Institutional Eligibility Requirements

a) ISAC Program Participation Agreement

- 1) All Institutions shall execute an ISAC Program Participation Agreement in order to participate in ISAC Gift Assistance programs.
- 2) The ISAC Program Participation Agreement shall identify the ISAC programs under which the Institution's students may receive benefits.
- 3) The ISAC Agreement shall include provisions requiring Institutions to comply with statutes, Rules and Regulations.

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- 4) The ISAC Program Participation Agreement may be modified or terminated in accordance with 23 Ill. Adm. Code 2790. Limitation, Suspension or Termination Proceedings.
- b) With respect to ISAC student assistance programs, Institutions shall develop and maintain procedures to verify the consistency and accuracy of information received from their Enrolled recipients.
- c) Institutions shall be subject to possible Limitation, Suspension or Termination of eligibility for failure to comply with statutes, Regulations, Rules, or procedures and for failure to maintain the standards required by this Section for initial participation. (See: 23 Ill. Adm. Code 2790.)
- d) Postsecondary Institutions which participate in Gift Assistance Programs shall annually submit to ISAC a copy of both their Satisfactory Academic Progress Policy and their Tuition Refund Policy. Public postsecondary Institutions shall also submit a copy of their policy establishing a minimum grade point average for recipients of grants pursuant to the Illinois National Guard Grant Program and the Illinois Veteran Grant Program. Such submissions shall not be considered ISAC approval of such policies.
- e) Postsecondary Institutions which participate in Gift Assistance Programs shall annually report their Tuition and fee charges, as well as advance payment requests, to ISAC on or before June 1 preceding each Academic Year.
 - 1) Failure to report any cost changes by the deadline will cause the prior year's charges to be used as part of the calculation process for student-assistance Gift Assistance benefits. Failure to report the assessment of a fee charge by the deadline will result in that fee charge being ineligible for payment under ISAC Gift Assistance Programs.
 - 2) The report shall match specific fee charges with the Gift Assistance program(s) which may finance the fee. Such categorizations by the Institution shall not be considered ISAC approval.
 - 3) The Illinois National Guard Grant and the Illinois Veteran Grant (IVG) Programs may finance only a portion of certain fee charges. (See: 23 Ill. Adm. Code 2730.10(c) and 2733.20(f).)
 - A) Example: One fee finances both Tuition and text book expenses. Only the portion of the fee which is attributable to Tuition expenses may be financed with program benefits.

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- B) Institutions with such a fee shall certify what percentage of the fee is eligible to be financed with program benefits. Certification shall be performed by the Institution's chief fiscal officer.
- f) Institutions shall submit additional reports, data and information to ISAC as may be requested. These inquiries include, but are not limited to, surveys, enrollment confirmations, and evaluation instruments.
- g) Additional institutional eligibility requirements are contained in subsequent Parts of the ISAC Rules.
- h) Postsecondary Institutions may apply to participate in ISAC-Guaranteed Loan programs in accordance with 23 Ill. Adm. Code 2720.
- i) Postsecondary Institutions may apply to participate in ISAC Gift Assistance programs in accordance with this subsection.
 - 1) The Commission approves participation in ISAC student assistance Gift Assistance programs for an Institution rather than for specific academic programs within an Institution.
 - A) When requesting payment of benefits, Institutions shall certify (in accordance with ISAG Rules and/or Federal Regulations) whether enrollment in a particular academic program qualifies the announced recipient to claim ISAC administered benefits.
 - B) Students Enrolled in academic programs while incarcerated are ineligible for ISAC Gift Assistance benefits.
- 2) Prior to applying for participation in ISAC Gift Assistance programs, the institutional Applicant must have authority to operate a postsecondary Institution in Illinois. (See: 23 Ill. Adm. Code 1030.)
- 3) Institutional Applicants which are fully accredited by the North Central Association and have degree-granting authority shall be approved to participate in ISAC student-assistance Gift Assistance programs provided the Institution meets and maintains the requirements of subsections (1)(4)(G) and (D) below.
- 4) Institutional Applicants which do not meet the requirements of subsection (1)(3) above shall be approved to participate in ISAC student-assistance Gift Assistance programs if the

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Institution has:

- A) obtained candidate status for North Central accreditation.
- B) applied for and is seeking degree-granting authority.
- C) obtained at least three letters indicating the transferability of academic credit from the Applicant Institution to other Institutions. The letters must be from Institutions which are approved to participate in the Monetary Award Program (MAP) and are fully accredited by the North Central Association. (See: 23 Ill. Adm. Code 2735.60.)

D) an adequate number of qualified persons to administer their responsibilities under ISAC Rules. In determining whether an Institution employs an adequate number of qualified persons, the Commission considers the number of students aided, the number of programs in which the Institution participates, the number of applications evaluated, the amount of funds administered, and the financial aid delivery system used by the Institution.

5) Institutional applicants must also supply ISAC with audited financial statements prepared by an independent third party in accordance with generally accepted accounting principles, to establish financial responsibility. (See, e.g., 34 CFR 668.13 and 14.)

6) Once approved to participate in ISAC student-assistance GHI Assistance programs by the Commission, an Institution shall receive provisional eligibility for a minimum of five academic years.

A) On or before June 1 preceding each Academic Year, an Institution with provisional eligibility shall annually submit three letters indicating the transferability of academic credit to other Institutions for the following Academic Year. These letters must be from ISAC-approved MAP Institutions which are fully accredited by the North Central Association.

B) An Institution with provisional eligibility must petition the Commission for full eligibility. Full eligibility will be granted if the Institution meets the requirements of subsection (1)(3) above and if there are no outstanding audit exceptions.

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j) As a condition of eligibility for participation in ISAC student assistance programs, postsecondary Institutions shall have a valid Program Participation Agreement with ED. (See: Section 487 of the Higher Education Act of 1965, as amended (20 U.S.C.A. 1094).)

k) In order to begin and to continue participation in ISAC-administered student assistance programs, Institutions must also demonstrate administrative capability and financial responsibility, as defined by federal regulations. (See, e.g., 34 CFR 668.13 et seq.) An Institution's failure to meet and maintain those standards can lead to limitation, suspension or termination proceedings. (See 23 Ill. Adm. Code 2790.)

(Source: Amended at 18 Ill. Reg. _____, effective _____, 1994.)

Section 2700.40 General Applicant Eligibility Requirements

a) Except as otherwise provided by this subsection, an Applicant with a defaulted loan or a defaulted Perkins Loan (20 U.S.C.A. 1087aa) is not eligible for benefits under ISAC-administered programs.

1) Eligibility for future terms may be reinstated in accordance with the following provisions:

A) Eligibility for ISAC-Guaranteed Loans will be reinstated when:

1) the debt has been paid in full; or

2) the borrower has made six consecutive reasonable and affordable payments based upon the borrower's total financial circumstances, as provided for in Section 428F(b) of the Higher Education Act, as amended.

3) the borrower's prior defaulted loan(s) has been rehabilitated by making twelve payments in an amount that will allow the debt to be paid in full within ten years, pursuant to Section 428F(a)(1)(A) of the Higher Education Act, as amended; or

4) the borrower has made arrangements to repay the defaulted loan(s) in terms that are satisfactory to the holder of the defaulted loan(s) and the defaulted loan(s) will become part of a Consolidation Loan, if in delinquent status or Default Status; the borrower will enter repayment

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through loan consolidation, pursuant to Section 428(a)(3) of the Higher Education Act of 1965, as amended. (See Consolidation Loans - Section 419 of the Higher Education Act Amendments of 1992; P.L. 102-325).

B) Borrowers are eligible to use subsections (A)(2) and (A)(3) above only one time during the entire life of any loan guaranteed by ISAC.

Cb) Eligibility for ISAC-administered Gift Assistance will be reinstated when the Applicant has maintained a satisfactory repayment record for at least six consecutive months or has met the requirements of subsection (a)(1)(A) above. Factors to be considered by ISAC in evaluating the repayment record include: the amount of the debt, the amount of the payments received by ISAC, the employment status of the Applicant, and the frequency of the Applicant's contact with ISAC.

2) An Applicant for Illinois Veteran Grant (IVG) assistance (23 Ill. Adm. Code 2733) shall be permitted one Term of assistance during which a satisfactory repayment record, as defined by subsection (a)(1)(B) above, must be established. If such a repayment record is not established, additional assistance shall be denied until a satisfactory repayment record is established.

b) No Applicant shall receive ISAC-administered assistance if Applicant owes a refund for: Any ISAC-administered Gift Assistance, a Federal Pell Grant, or a Federal Supplemental Educational Opportunity Grant (SEOG) (20 U.S.C.A. 1070(b)).

c) An Applicant shall, upon request, provide documentation to establish and verify eligibility. (See: Section 2700.50.) Failure to supply adequate documentation will result in the denial of student assistance benefits.

d) An Applicant supplying fraudulent data shall be denied assistance and may also be subject to prosecution by the Illinois Attorney General, United States Department of Justice and/or an Illinois State's Attorney.

e) All Applicants must submit their Social Security Number.

f) Recipients who cease to be Residents of Illinois after notification of eligibility may complete the Academic Year with the assistance awarded.

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g) Unless otherwise provided, benefits under Gift Assistance programs are subject to the limits of dollars appropriated to ISAC by the Illinois General Assembly and approved by the Governor. Benefits under Gift Assistance programs are generally limited to the Regular School Year. If funding is available, assistance for summer Terms shall be awarded separately.

h) When Gift Assistance eligibility is limited to a specified number of Term payments, the eligibility cap is calculated in accordance with this subsection.

1) For each semester Term of full-time payment benefits, the recipient is assessed six eligibility units. For each quarter Term of full-time payment benefits, the recipient is assessed four eligibility units.

2) For each Term of half-time payment benefits, one-half of the above eligibility units is assessed.

3) Sixty eligibility units are the equivalent of payments for ten semester/fifteen quarters of full-time benefits.

4) Forty-eight eligibility units are the equivalent of payments for eight semesters/twelve quarters of full-time benefits.

i) An Applicant shall submit Selective Service registration compliance documentation to the postsecondary institution as required by 34 CFR 668.31 et seq.

j) Except for grants pursuant to 23 Ill. Adm. Code 2730 (Illinois National Guard Grant Program) and 23 Ill. Adm. Code 2733 (Illinois Veteran Grant Program), an Applicant must be maintaining Satisfactory Academic Progress in accordance with the Institution's policy.

(Source: Amended at 18 Ill. Reg. _____, effective _____, 1994)

Section 2700.50 Determining Applicant Eligibility

a) The evaluation of Applicant eligibility is the responsibility of both the Institution and ISAC.

b) No Applicant is announced eligible for assistance by ISAC unless the application establishes prima facie eligibility. ISAC consults with other appropriate state and federal agencies in the process of reviewing application data. Such agencies include, but are not limited to, the U.S. Department of Education (ED), U.S. Internal Revenue Service (IRS), U.S. Immigration and Naturalization Service

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(INS). Illinois Department of Public Aid, Illinois Department of Revenue, and Illinois Department of Children and Family Services.

- c) When requesting payment for ISAC programs, the postsecondary Institution must certify that the applicants are eligible recipients. If an Institution subsequently determines a student is ineligible for the awarded assistance, the Institution must inform ISAC and submit the appropriate refund.
- d) If an Institution erroneously certifies an Applicant to be eligible, ISAC will recover the erroneous payment from the Institution. Any student who obtained ISAC-administered funds by submitting inaccurate information to an Institution must tender restitution to the Institution to be eligible for ISAC assistance at that Institution.
- e) If an Applicant is selected for Verification in conjunction with federal student assistance, that Applicant shall also be verified for ISAC-administered programs. A selected Applicant must be verified for ISAC programs even if the Applicant is ineligible for federal student assistance.

f)-----Institutions must verify Illinois-residency--as-defined-in-Section 2700.20 of this Part;--for-students-who-were-not-enrolled-in-an Illinois-Institution-for-the-previous-Regular-School-Year-and-who are-classified-as-independent-Students.

f-g) Because ED Verification procedures do not include procedures for verifying a student as a Resident of Illinois, the following provisions shall be followed by the Institutions.

- 1). Residency status shall be verified for each Applicant who is selected for Verification and meets one of the following criteria:

- A). the Applicant has changed dependency status and has become an Independent student; or
- B) the Applicant has not been Enrolled in an ISAC-approved MAP Institution or an ISAC-approved Illinois High School (see Section 2700.30) during the preceding twelve months; or
- C) the Institution has any information which indicates the Applicant may not be a Resident of Illinois.

2)-----A-Valid-Income-Tax-Return--Federal-or-State, may-provide-proof that-an-Applicant-(or-Parent) 45-an-Illinois-Resident-as

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defined-in-Section-2700.20:

3)-----If-an-Applicant-(or-Parent)-is-not-required-by-law-to-file-an income-tax-return,--or-if-the-tax-return-does-not-provide-proof of-Illinois-residency,--one

- 2) One or more of the documents listed below may provide proof that an Applicant (or Parent) is an Illinois Resident, as defined in Section 2700.20 of this Part. For an Independent Student Applicant, the dates recorded on the documents must indicate the Applicant has resided in Illinois for the relevant twelve continuous months.

- A) A valid state or federal income tax return
- BA) Illinois High School or college transcript
- CB) Illinois Driver's License
- DE) Utility or rent bills in the Applicant's (or Parent's) name
- EP) Illinois Auto Registration card
- EE) Residential lease in the Applicant's (or Parent's) name
- GF) Wage and Tax Statements (IRS Form W-2)
- HE) Statement of benefits history from the Illinois Department of Public Aid
- IH) State of Illinois Identification Card issued by the Secretary of State
- J) Statement of benefits from the Illinois Department of Employment Security

24) If an Applicant is a Resident of Illinois, but the Institution cannot document this fact in accordance with subsection (g)(2) subsections (f)(2)--and--(h) above, the Applicant or the Institution may verify residency through ISAC's appeal process. (See: Section 2700.70.)

gh) Institutions may request first Term payment even though Verification is not yet complete. If, after Verification, an ISA payment adjustment is appropriate, Institutions must submit the appropriate refund. If Verification is not completed within 60 days after the conclusion of the Regular School Year, the Institution shall return the first Term payment to ISAC. For other than the first Term of eligibility in an Academic Year, the Verification process must be completed before the Institution may request payment.

hi) When an Institution adjusts an Applicant's eligibility pursuant to Title IV, Part F, of the Higher Education Act of 1965, as amended (20 U.S.C. 1087kk et seq.), the Institution shall retain documentation which demonstrates the appropriateness of such adjustment.

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Section 2700.60 Audits and Investigations

a) ISAC shall audit participating postsecondary Institutions. Postsecondary Institutions shall be audited once every three years (schedule permitting) unless more frequent audits appear to be necessary due to circumstances such as: substantial increases in student enrollment, evidence that the Institution is experiencing difficulty meeting the requirements of these Rules or Federal Regulations, or discrepancies in past audits conducted by ISAC. Institutions with provisional eligibility shall be audited annually, schedule permitting. Secondary Institutions may be audited when ISAC has a complaint indicating an audit is appropriate. Audits shall usually be announced, but ISAC reserves the right to make unannounced audits.

b) ISAC shall have access to all records related to ISAC programs. These records include, but are not limited to: admission records, financial records, registration records, attendance and enrollment records, financial aid transcripts, grades, academic transcripts and records maintained in accordance with ED Verification Procedures.

c) ISAC audits shall be conducted in accordance with generally accepted audit standards as promulgated by the U.S. General Accounting Office publication "Standards for Audit of Governmental Organizations, Program Activities and Functions," where applicable.

d) The Institution shall be extended an opportunity to review and comment on the auditor's preliminary findings before the final audit report is submitted to the Institution's chief executive officer. Audit findings may be appealed in accordance with Section 2700.70, Appeal Procedures.

e) If an audit identifies ~~student~~-assistance Gift Assistance funds which were claimed on behalf of ineligible students, the funds shall be deducted from subsequent payments to the Institution.

f) ISAC may visit Institutions to conduct investigations related to fraud and abuse of ISAC programs. Campus administrators and/or campus security police may be consulted as part of any on-going investigation.

(Source: Amended at 18 Ill. Reg. _____, effective _____, 1994)

ILLINOIS STUDENT ASSISTANCE COMMISSION

NOTICE OF PROPOSED AMENDMENT(S)

1) The Heading of the Part: Grant Program For Dependents of Correctional Officers

2) Code Citation: 23 Ill. Adm. Code 2731

3) Section numbers: Proposed Action:
2731.10 Amended
2731.20 Amended

4) Statutory Authority: Implementing Section 60 and authorized by Section 20(f) of the Higher Education Student Assistance Act (Ill. Rev. Stat. 1991, ch. 144, pars. 3060 and 3020(f) (See P.A. 87-997, effective September 3, 1992) [110 ILCS 947/60 and 20(f)]).

5) A Complete Description of the Subjects and Issues Involved: ISAC annually reviews its rules in order to respond to market changes and client suggestions, to implement state and federal statutory changes, and to clarify issues that have arisen during the previous year. In addition to making minor technical and grammatical changes throughout this Part, ISAC proposes the following substantive amendments: Section 2731.10(a) has been changed to specify that only dependents of employees of the Illinois Department of Corrections assigned to security positions are eligible for program benefits. Section 2731.10(b) has been amended to match the name of this program, which was changed last year to more accurately reflect the intended beneficiaries. Section 2731.20(c) now includes an award limit, which by law is the same as that for the Monetary Award Program, and is currently set at \$3,500, for the convenience of clients who may not have access to Illinois statutes.

6) Will this proposed amendment replace an emergency rule currently in effect? No.

7) Does this rulemaking contain an automatic repeal date? No.

8) Does this proposed amendment contain incorporations by reference? No.

9) Are there any other amendments pending on this Part? No.

10) Statement of Statewide Policy Objectives: This rulemaking does create or expand a state mandate as defined in Section 3(b) of the State Mandates Act (Ill. Rev. Stat. 1991, ch. 85, par 2203) [30 ILCS 805/3] and does not necessitate a local government to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

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Comments may be submitted in writing for a period of 45 days following publication of this notice. Comments should be submitted to:

Ms. Raquel G. Martinez
Compliance Counsel
Illinois Student Assistance Commission
1755 Lake Cook Road
Deerfield, Illinois 60015

- 12) Initial Regulatory Flexibility Analysis: This rulemaking does not affect small businesses.

The full text of the proposed amendments begin on the following page:

ILLINOIS STUDENT ASSISTANCE COMMISSION

NOTICE OF PROPOSED AMENDMENTS

TITLE 23: EDUCATION AND CULTURAL RESOURCES
SUBTITLE A: EDUCATION

CHAPTER XIX: ILLINOIS STUDENT ASSISTANCE COMMISSION

PART 2731

GRANT PROGRAM FOR DEPENDENTS OF CORRECTIONAL OFFICERS

Section
2731.10
2731.20

Summary and Purpose
Program Procedures

AUTHORITY: Implementing Section 60 and authorized by Section 20(f) of the Higher Education Student Assistance Act (Ill. Rev. Stat. 1991, ch. 144, pars. 3060 and 3020(f)) (See P.A. 87-997, effective September 3, 1992) [110 ILCS 94/60 and 20(f)].

SOURCE: Adopted at 9 Ill. Reg. 20780, effective January 1, 1986; transferred from Chapter IX, 23 Ill. Adm. Code 1731 (State Scholarship Commission) to Chapter XIX, 23 Ill. Adm. Code 2731 (Illinois Student Assistance Commission) pursuant to P.A. 86-168, effective July 1, 1989, at 13 Ill. Reg. 17853; amended at 14 Ill. Reg. 10534, effective July 1, 1990; amended at 17 Ill. Reg. 10559, effective July 1, 1993; amended at 18 Ill. Reg. _____, effective _____, 1994.

Section 2731.10 Summary and Purpose

- a) If a ~~correctional officer~~ correctional officer is employed by the Illinois Department of Corrections in a security position and is killed or at least ninety percent disabled in the line of duty, the employee's spouse and children may receive grant assistance under this Part.

- b) This Part establishes Rules which govern the ~~correctional officers~~ Grant Program for Dependents of Correctional Officers. Additional Rules and definitions are contained in the General Provisions Part at 23 Ill. Adm. Code 2700. Defined terms are indicated by the first letter being capitalized.

(Source: Amended at 18 Ill. Reg. _____, effective _____, 1994.)

Section 2731.20 Program Procedures

- a) Children are defined as the natural child, legally adopted child, or any child in the legal custody of the ~~correctional officer~~ correctional officer at the time of death or disability.
- b) Grants may be used at any postsecondary institution approved for participation in the Monetary Award Program, provided the Applicant is Enrolled on at least a half-time basis and is maintaining

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Satisfactory Academic Progress. (See: 23 Ill. Adm. Code 2735.60.)

- c) Grant amounts shall be calculated in accordance with Sections 35(c)(1) and (2) of the Higher Education Student Assistance Act (Ill. Rev. Stat. 1991, ch. 144, par. 3035(c)(1) and (2)) (See P.A. 87-997, effective September 3, 1992) [110 ILCS 94/35(c)(1) and (2)], which govern the Monetary Award Program (MAP). Grants shall not exceed the statutory maximum MAP grant for that Academic Year. Financial need is not a criterion.

- d) Benefits are limited to the equivalent of eight semesters or twelve quarters of payment.

- e) Applicants shall file a biographical application identifying the deceased/disabled Correctional Officer and will be required to submit a death certificate or proof of disability. Once eligibility has been established on behalf of all eligible survivors in the family, an annual application identifying the Institution to be attended is required.

(Source: Amended at 18 Ill. Reg. _____, effective _____, 1994)

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NOTICE OF PROPOSED AMENDMENT(S)

- 1) The Heading of the Part: Illinois National Guard Grant Program

- 2) Code Citation: 23 Ill. Adm. Code 2730

- 3) Section numbers: Proposed Action:

2730.5 Amended
2730.20 Amended

- 4) Statutory Authority: Implementing Section 45 and authorized by Section 20(f) of the Higher Education Student Assistance Act (Ill. Rev. Stat. 1991, ch. 144, pars. 3045 and 3020(f)) (See P.A. 87-997, effective September 3, 1992)) [110 ILCS 94/45 and 20(f)].

- 5) A Complete Description of the Subjects and Issues Involved: ISAC annually reviews its rules in order to respond to market changes and client suggestions, to implement state and federal statutory changes, and to clarify issues that have arisen during the previous year. In addition to making minor technical and grammatical changes throughout this Part, ISAC proposes the following substantive amendments: One of ISAC's advisory groups, the Illinois Bursars' Organization, has urged that this agency expedite the payment process for this program. In response to that request, Section 2720.20(b)(1) has been amended by reducing the time frame within which schools return payment rosters from 30 to 21 days and by reducing the time frame for returning supplemental rosters from 45 to 30 days. The application deadline dates in Section 2730.20(d) have also been accelerated. If applications are submitted to ISAC sooner, this agency will be able to create payment rosters and forward them to schools more quickly. If schools return these rosters at an earlier date, ISAC will be able to process the payment claims earlier and, presumably, institutions will receive checks from the State Comptroller more promptly. Additionally, this more expedient process will relieve some of the administrative pressure at the end of the fiscal year, especially when summer term claims are paid. Finally, Section 2730.20(g) now contains an illustration of the proration calculation for the benefit of clients.

- 6) Will this proposed amendment replace an emergency rule currently in effect? No.

- 7) Does this rulemaking contain an automatic repeal date? No.

- 8) Does this proposed amendment contain incorporations by reference? No.

- 9) Are there any other amendments pending on this Part? No.

- 10) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a state mandate as defined in Section 3(b) of the State Mandates Act (Ill. Rev. Stat. 1991, ch. 85, par. 2203) [30 ILCS 805/3] and does not necessitate a local government to establish, expand or modify its

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activities in such a way as to necessitate additional expenditures from local revenues.

- 11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Comments may be submitted in writing for a period of 45 days following publication of this notice. Comments should be submitted to:

Ms. Raquel G. Martinez
Compliance Counsel
Illinois Student Assistance Commission
1755 Lake Cook Road
Deerfield, Illinois 60015

- 12) Initial Regulatory Flexibility Analysis: This rulemaking does not affect small businesses.

The full text of the proposed amendments begin on the following page:

ILLINOIS STUDENT ASSISTANCE COMMISSION

NOTICE OF PROPOSED AMENDMENTS

TITLE 23: EDUCATION AND CULTURAL RESOURCES
SUBTITLE A: EDUCATION

CHAPTER XIX: ILLINOIS STUDENT ASSISTANCE COMMISSION

PART 2730

ILLINOIS NATIONAL GUARD GRANT PROGRAM

Section
2730.5 Summary and Purpose
2730.10 Applicant Eligibility
2730.20 Program Procedures

AUTHORITY: Implementing Section 45 and authorized by Section 20(f) of the Higher Education Student Assistance Act (Ill. Rev. Stat., 1991, ch. 144, pars. 3045 and 3020(f)) (See P.A. 87-997, effective September 3, 1992)) [110 ILCS 947/45 and 20(f)].

SOURCE: Adopted at 3 Ill. Reg. 4, p. 38, effective January 26, 1979; rules repealed at 6 Ill. Reg. 8239, effective June 30, 1982; new rules adopted at 6 Ill. Reg. 8413, effective June 30, 1982; codified at 7 Ill. Reg. 10877; amended at 8 Ill. Reg. 17016, effective September 5, 1984; amended at 9 Ill. Reg. 20827, effective January 1, 1986; amended at 11 Ill. Reg. 3202, effective January 29, 1987; amended at 12 Ill. Reg. 11531, effective July 1, 1988; transferred from Chapter IX, 23 Ill. Adm. Code 1730 (State Scholarship Commission) to Chapter XIX, 23 Ill. Adm. Code 2730 (Illinois Student Assistance Commission) pursuant to P.A. 86-168, effective July 1, 1989, at 13 Ill. Reg. 17857; amended at 14 Ill. Reg. 10567, effective July 1, 1990; amended at 16 Ill. Reg. 11254, effective July 1, 1992; amended at 17 Ill. Reg. 10563, effective July 1, 1993; amended at 18 Ill. Reg. _____, effective _____, 1994.

Section 2730.5 Summary and Purpose

- a) Eligible recipients are entitled to an exemption from payment of tuition and certain fees at state-controlled universities and community colleges as described in this Part. If funds appropriated for the Illinois Student Assistance Commission (ISAC) are insufficient to reimburse public postsecondary institutions for all eligible recipients, the obligation to pay is transferred to the educational institution.
- b) This Part establishes Rules which govern the Illinois National Guard Grant Program. Additional Rules and definitions are contained in the General Provisions Part at 23 Ill. Adm. Code 2700. Defined terms are indicated by the first letter being capitalized.

(Source: Amended at 18 Ill. Reg. _____, effective _____, 1994)

Section 2730.20 Program Procedures

- a) Payment Request

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- 1) The Institution must request from each Applicant a valid Illinois National Guard Grant Eligibility Letter. The Institution must complete ~~maintain~~ two ISAC payment certification forms which certify the Applicant's:

- A) Social Security Number;
- B) name;
- C) enrollment;
- D) grant amount; and
- E) Satisfactory Academic Progress.

- 2) One sheet is to be returned to ISAC for payment and the other retained by the Institution for record and audit purposes.

- b) Within the constraints of appropriation levels, two semester or three quarter Term payments and one summer Term payment are made directly to the Institution after it officially certifies to ISAC that the Applicant has registered and is attending classes. No seminars or other special Terms are covered under the grant. Summer Term is considered the final Term of the Academic and fiscal Year.

- 1) Payment certification forms will be mailed each Term to the Institution no earlier than the application deadline date for that Term. Payment certification forms must be returned no later than ~~thirty-(30)~~ twenty-one (21) days after they have been mailed to the Institution by ISAC. Supplemental certification forms must be submitted to ISAC no later than ~~forty-five-(45)~~ thirty (30) days after the original payment certification form was mailed to the Institution with the exception of summer Term supplements which must be submitted by the same deadline as the original payment certification for summer Term. All certification forms received by ISAC after the designated dates will be paid or prorated during the fiscal lapse period (July 1 through September 30 following the conclusion of the fiscal year).

- 2) Claims will be paid as follows:

- A) First semester and first quarter claims received by the designated deadline date will be paid or prorated, if funding is insufficient to pay all claims in full.

- B) If funds remain after first semester and first quarter claims are paid, then second semester and second and third quarter claims received by the designated deadline date will be paid, or prorated if funds remaining are insufficient to pay all such claims in full.

- C) If funds still remain after the preceding claims are paid, summer Term claims received by the designated

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deadline date will be paid, or prorated, if remaining funds are insufficient to pay all summer claims in full.

- D) In the event that funds are not exhausted by summer Term payments, claims received after the designated deadline dates will be paid or prorated.

- E) If funds are still available when the preceding claims have been paid in full, ISAC will use remaining funds to pay or prorate claims for the balance of non-residents' Tuition for recipients who live out-of-state or out-of-district.

- c) Changes of address, name, status with the Guard, or Institution of attendance must be reported in writing to ISAC. Verification of receipt of changes sent to ISAC will be mailed directly to the Applicant's address recorded with ISAC.

- d) Applicants must file an application each Academic Year indicating the Institution to be attended. No payment will be authorized for any Applicant until a current application is on file. The deadline for application will be ~~October 1~~ September 15 for first Term, March 15 for second semester/second and third quarter, and July 1 June 15 for the summer Term. Institution of attendance changes must also be reported by these dates.

- e) Eligible recipients are entitled to receive benefits for the equivalent of eight semesters/twelve quarters of full-time enrollment.

- 1) To determine the amount of eligibility a recipient has used, credit hours will be converted to "eligibility units" according to the following chart:

Number of Hours	Semester School	Quarter School
12 or more hours	12 units	8 units
9 - 11.99 hours	9 units	6 units
6 - 8.99 hours	6 units	4 units
3 - 5.99 hours	3 units	2 units
0 - 2.99 hours	1 unit	1 unit

- 2) Recipients may continue to reapply and accumulate up to 96 units, after which point eligibility for program benefits will cease.

- 3) In the event that the recipient withdraws from a course(s) prior to the end of a Term, eligibility units will be assessed in proportion with the total dollars that are paid. If the recipient has had any portion of his/her Tuition and fees

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paid, at least one eligibility unit will be charged to the recipient.

Example: A recipient is Enrolled for twelve semester hours at a cost of \$300.00. The recipient withdraws from enrollment and incurs expenses of \$150.00 in accordance with the Institution's Tuition refund policy. The recipient would use six eligibility units and would receive \$150.00 in benefits.

4) The eligibility units used for a non-credit course shall be the same as the number of eligibility units used for a credit course having the same number of total faculty contact hours.

f) If a current year Applicant is discharged or has membership extended by the Guard, ISAC will send a revised eligibility letter or ineligibility letter to the Applicant. In the case of discharges, a copy of the letter will be sent to the Institution of record.

g) If a recipient ceases to be a member of the Guard in mid-term, benefits are terminated and the recipient is responsible for the costs attributed to the remainder of the Term. If an Applicant becomes eligible in mid-term, in accordance with Section 2730.10(b), benefits will be prorated for that portion of the Term for which the Applicant is eligible, provided the application is submitted by the deadlines established in subsection (d). Costs are prorated on the basis of the Institution's scheduled days of instruction minus institutionally scheduled holidays and examination periods.

Calculation: $\text{Total tuition cost} \div \text{total instructional days} = \text{cost per day} \times \text{days of eligibility} = \text{total proration.}$

h) Out-of-state residents will receive Tuition and applicable fee benefits equivalent to those received by in-state residents at the Illinois Institution; recipients attending out-of-district community colleges will receive tuition and applicable fee benefits equivalent to those at the in-district rate. Recipients shall not be responsible for paying the difference between in-state and out-of-state tuition nor will they be responsible for paying the difference between in-district and out-of-district tuition.

i) Payments on behalf of a recipient will be made to only one Institution per Term. For any Institution that has a Concurrent Registration opportunity, the same payment policy will be in effect as that used in the Monetary Award Program. (See: 23 Ill. Adm. Code 2735.70(d).)

(Source: Amended at 18 Ill. Reg. _____, effective _____, 1994)

ILLINOIS STUDENT ASSISTANCE COMMISSION

NOTICE OF PROPOSED AMENDMENT(S)

1) The Heading of the Part: Illinois Veteran Grant (IVG) Program

2) Code Citation: 23 Ill. Adm. Code 2733

3) Section numbers: Proposed Action:

2733.20 Amended

2733.30 Amended

4) Statutory Authority: Implementing Section 40 and authorized by Section 20(f) of the Higher Education Student Assistance Act (Ill. Rev. Stat. 1991, ch. 144, pars. 3040 and 3020(f)) (See P.A. 87-997, effective September 3, 1992)) [110 ILCS 947/40 and 20(f)].

5) A Complete Description of the Subjects and Issues Involved: ISAC annually reviews its rules in order to respond to market changes and client suggestions, to implement state and federal statutory changes, and to clarify issues that have arisen during the previous year. In addition to making minor technical and grammatical changes throughout this Part, ISAC proposes the following substantive amendments: Section 40 of the Higher Education Student Assistance Act provides that IVG recipients are exempted from paying tuition and mandatory fees (i.e., those charges assessed by an institution to each and every full-time student). This exemption does not, however, apply to multipurpose building fees or similar fees for supplies and materials. Institutions find it increasingly necessary to rely on fees in their attempts to produce new revenues. ISAC cannot anticipate all the different types of fees that might be created or the names that will be assigned to them. ISAC has, however, responded to this dilemma by developing, over time, a list of fees that are covered by an IVG grant as well as a list of fees for which the recipient is individually responsible. ISAC and other responsible governing authorities have noted that an increasing number of fees are being assessed for the rental of equipment. Consequently, Section 2733.20(f)(2)(D) has been amended to specifically exclude fees for the rental of equipment since these are types of fees for which the student is responsible. Section 2733.20(h) has been deleted in compliance with Public Act 88-179, which became effective on August 4, 1993. That law removed the previous restriction on Persian Gulf veterans requiring that they begin and complete their term of study within one year after September 6, 1991. Section 2733.30(a)(1)(D)(iii) has also been amended in compliance with P.A. 88-179, which removed the 9 month active duty requirement for those who served in the Persian Gulf War and added Somalia veterans to those who may be eligible to receive program benefits. Section 2733.30(a)(3)(A) now identifies the state and federal record centers from which veterans can obtain copies of their separation reports (DD214), in an effort to assist advisors at institutions who may not be aware of the resources available to veterans. Section 2733.30(a)(3)(c) has been updated to specifically include the types of documents that are necessary for ISAC to determine eligibility. Section 2733.30(a)(4)

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previously made reference to the section of ISAC rules which delineates the documentation requirements for verifying a student's Illinois residency (see 23 Ill. Adm. Code 2700.50(g)), even though that definition does not apply to this program. Residency for IVG purposes is dependent upon a specific six month period before entering military service and after leaving such service. Section 2733.30(a)(4) has been amended to include a list of documents which may be used to verify residency for this program. Section 2733.30(c) has been changed in response to an advisory committee suggestion which urged that ISAG expedite the payment process for IVG. Earlier payment requests from institutions will enable ISAG to process the claims more quickly and, presumably, schools will receive checks from the State Comptroller more promptly.

- 6) Will this proposed amendment replace an emergency rule currently in effect? No.
- 7) Does this rulemaking contain an automatic repeal date? No.
- 8) Does this proposed amendment contain incorporations by reference? No.
- 9) Are there any other amendments pending on this Part? No.
- 10) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a state mandate as defined in Section 3(b) of the State Mandates Act (Ill. Rev. Stat. 1991, ch. 85, par 2203) [30 ILCS 805/3] and does not necessitate a local government to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues.
- 11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Comments may be submitted in writing for a period of 45 days following publication of this notice. Comments should be submitted to:

Ms. Raquel G. Martinez
Compliance Counsel
Illinois Student Assistance Commission
1755 Lake Cook Road
Deerfield, Illinois 60015

- 12) Initial Regulatory Flexibility Analysis: This rulemaking does not affect small businesses.

The full text of the proposed amendments begin on the following page:

ILLINOIS STUDENT ASSISTANCE COMMISSION

NOTICE OF PROPOSED AMENDMENTS

TITLE 23: EDUCATION AND CULTURAL RESOURCES

SUBTITLE A: EDUCATION

CHAPTER XIX: ILLINOIS STUDENT ASSISTANCE COMMISSION

PART 2733

ILLINOIS VETERAN GRANT (IVG) PROGRAM

Section
2733.10
2733.20
2733.30
Summary and Purpose
Grant Eligibility
Program Procedures

AUTHORITY: Implementing Section 40 and authorized by Section 20(f) of the Higher Education Student Assistance Act (Ill. Rev. Stat. 1991, ch. 144, pars. 3040 and 3020(f)) (See P.A. 87-997, effective September 3, 1992) [110 ILCS 947/40 and 20(f)].

SOURCE: Emergency rule adopted at 10 Ill. Reg. 14322, effective August 20, 1986 for a maximum of 150 days; adopted at 11 Ill. Reg. 3207, effective January 29, 1987; amended at 12 Ill. Reg. 11536, effective July 1, 1988; transferred from Chapter IX, 23 Ill. Adm. Code 1733 (State Scholarship Commission) to Chapter XIX, 23 Ill. Adm. Code 2733 (Illinois Student Assistance Commission) pursuant to P.A. 86-168, effective July 1, 1989, at 13 Ill. Reg. 17858; amended at 14 Ill. Reg. 10571, effective July 1, 1990; emergency amendments at 15 Ill. Reg. 15613, effective October 11, 1991 for a maximum of 150 days; emergency amendment at 15 Ill. Reg. 18778, effective January 1, 1992 for a maximum of 150 days; amended at 16 Ill. Reg. 6880, effective April 14, 1992; amended at 16 Ill. Reg. 11261, effective July 1, 1992; amended at 17 Ill. Reg. 10570, effective July 1, 1993; amended at 18 Ill. Reg. _____, effective _____, 1994.

Section 2733.20 Grant Eligibility

- a) A recipient must have been designated a Qualified Veteran by ISAG.
(See: Section 2733.30(a).)
- b) A recipient must reside in Illinois unless the recipient is a member of the Armed Forces at the time of enrollment.
- c) A recipient must maintain an acceptable grade point average as determined by the Institution pursuant to a published policy.
- d) Benefits are applicable to both undergraduate and graduate enrollment. There is no minimum credit hour enrollment requirements and benefits are applicable for non-credit courses.
- e) Benefits may be used to Enroll at Illinois public senior universities and Illinois public community colleges.

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f) Fees Exempted by the IVG

- 1) The recipient is exempted from paying most fees including:
- A) Tuition and other instructional fees;
 - B) activity, air flight and athletic fees;
 - C) matriculation, service and other registration-type fees;
 - D) off-campus and other extension course fees;
 - E) application fees;
 - F) graduation and transcript fees;
 - G) proficiency exam, College Level Exam Program (CLEP), placement exam and similar fees; and
 - H) health insurance fees.

2) The recipient is responsible for payment of the following fees:

- A) book rental fees;
- B) laboratory and supply fees;
- C) student union fees; and
- D) fees for the operation, maintenance, or rental of equipping of any building, or facility or equipment.

g3) Recipients attending out-of-district community colleges receive Tuition and fee benefits equivalent to those at the in-district rate, unless sufficient funds are available to pay benefits in accordance with Section 2733.30(d)(5) of this Part. Recipients shall not be responsible for paying the difference between in-district and out-of-district tuition.

hg) Benefits are limited to the equivalent of four Academic Years of Full-time enrollment.

- 1) To determine the amount of eligibility a recipient has used, credit hours will be converted to "eligibility units" according to the following table:

Number of Hours	Semester Term	Quarter Term
12 or more hours	12 units	8 units
9 - 11.99 hours	9 units	6 units
6 - 8.99 hours	6 units	4 units
3 - 5.99 hours	3 units	2 units
up to 2.99 hours	1 unit	1 unit

- 2) Recipients may accumulate up to 120 eligibility units, after which eligibility for program benefits ceases. If a recipient has accumulated less than 120 eligibility units, the recipient may receive full program benefits for one additional Term.

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- 3) In the event that a recipient withdraws from a course(s) prior to the end of a Term, eligibility units will be assessed in proportion with the total dollars that are paid. If the recipient has had any portion of his/her Tuition and fees paid, at least one eligibility unit will be charged to the recipient.

Example: A recipient is Enrolled for twelve semester hours at a cost of \$300.00. The recipient withdraws from enrollment and incurs expenses of \$150.00 in accordance with the Institution's Tuition refund policy. The recipient would use six eligibility units and would receive \$150.00 in benefits.

- 4) The eligibility units used for a non-credit course shall be the same as the number of eligibility units used for a credit course having the same number of faculty contact hours.

h)-----A-recipient-who-qualifies-as-a-Persian-Gulf-Operation-Desert Shield/Storm-War-Veteran-(see-Section-2733.30(a)(1)(D)(ii))-of-this-Part)-must-begin-and-complete-the-term-of-Term-of-study-for-which-benefits-are-being-requested-prior-to-September-6,-1992:

- i) If a student is eligible for both IVG and MAP, the IVG benefits must be used first. A student cannot decline IVG benefits in favor of using MAP.

(Source: Amended at 18 Ill. Reg. _____, effective _____, 1994)

Section 2733.30 Program Procedures

- a) An Applicant must apply to ISAC for designation as a Qualified Veteran. ISAC shall issue a notice of eligibility to an Applicant who is a Qualified Veteran as defined by this subsection.

1) Definition of "Qualified Veteran"

- A) Any person who served in the Armed Forces of the United States who:
 - i) at the time of entering service was an Illinois resident or was an Illinois resident within 6 months prior to entering such service; and
 - ii) who after leaving service returned to Illinois within 6 months; or
 - iii) if married to a person in continued military service stationed outside Illinois, returned to Illinois within 6 months after his or her

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- iv) spouse's discharge; or if married to a person in continued military service, applies for this grant program within 6 months of his or her spouse being stationed within Illinois.
- B) Any veteran who, at the time of entering the Armed Forces, was a student at a State-controlled college or university or community college and who, after leaving service, returned to Illinois within 6 months.
- C) Any member of the Armed Forces of the United States who has served at least one year of active duty and who would be a Qualified Veteran under this subsection if honorably discharged from such service.
- D) An individual is not a Qualified Veteran if the individual was discharged from the Armed Forces of the United States under less than honorable conditions. An individual is not a Qualified Veteran if the individual's active duty with the Armed Forces was for less than one year unless:
- the Veteran was honorably discharged from such service for medical reasons directly connected with such service; or
 - the Veteran was honorably discharged prior to August 11, 1967; or
 - the Veteran was honorably discharged from such service, and has at least nine months of active duty, part of which includes service included duty in the Persian Gulf war during Operations Desert Shield or Desert Storm; or in military operations to aid Somalia.

2) The term "Armed Forces" shall be defined as the United States Army, Air Force, Navy, Marines and Coast Guard. Members of the Student Army Training Corps and a state's National Guard are not eligible for assistance under this Part.

3) The Applicant shall submit documentation to ISAG which demonstrates eligibility for designation as a Qualified Veteran.

A) An Applicant should submit a copy of his or her Report of Separation (Form DD 214) with the application; which can be obtained from the National Personnel Records Center or the Illinois Department of Veterans' Affairs.

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- B) If the Applicant does not have a copy of the DD 214, the Applicant should submit documentation which provides, the following information: date of entry; date of separation; type of discharge; total active service; home or place of entry into the service; and home or place of separation from the service. Such documentation must have been issued by the United States Department of Defense (DD) or the Veterans Administration.
- C) If the Applicant is a member of the Armed Forces at the time of application, the Applicant shall submit a copy of the original and/or current Enlistment Contract (Form DD4) and a letter from the commanding officer. If the veteran is in an initial enlistment, a copy of the original contract must be provided. If the veteran is on an enlistment extension, a copy of the current contract must be provided. The letter from the commanding officer must indicate that the Applicant is a member of the Armed Forces at the time of application; must include the veteran's home of record at the time of original enlistment; must state the veteran's length of time in service and the expiration date of the current enlistment.
- 4) If the Applicant's DD 214 does not indicate Illinois residency when entering and/or separating from the Armed Forces, the Applicant may verify establish Illinois residency by providing one or more of the documents listed below, in accordance with the documentation requirements of 23 Ill. Adm. Code 2700.50-62(3). The definition of "Resident of Illinois" contained in 23 Ill. Adm. Code 2700.20 is not applicable to the Illinois Veteran Grant Program; because residency, for the purposes of this program, can be established in six months.
- Illinois drivers license issued during the relevant six month period;
 - Illinois high school or college transcripts demonstrating attendance during the relevant six month period;
 - Utility bills/rent receipts in the Applicant's name for the relevant six month period;
 - Illinois motor vehicle registration issued during the relevant six month period;
 - Residential lease in the Applicant's name for the relevant six month period;
 - Statement of benefits history from the Illinois Department of Public Aid for the relevant six month

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period:

- G1) Statement of benefits from the Illinois Department of Employment Security for the relevant six month period;
- H2) State of Illinois identification card issued during the relevant six month period; or
- I2) Letter of employment verified by certification in accordance with Illinois law (See 735 ILCS 5/1-109) and printed on company letterhead.

5) If an Applicant is designated a Qualified Veteran pursuant to subsection (a)(1)(C), such designation shall expire upon discharge from the Armed Forces.

b) A Qualified Veteran shall be issued a notice of eligibility. To receive an Illinois Veteran Grant, an Applicant must submit a copy of the notice of eligibility to the Institution within three months following the last scheduled day of classes for the Term for which a grant is requested. A Qualified Veteran who received an Illinois Veterans Scholarship (IVS) ID card from the Illinois Department of Veterans' Affairs may receive an Illinois Veteran Grant by submitting a copy of that IVS ID card to the Institution.

c) Institutions shall submit a payment request to ISAC. The deadlines for submission of complete payment requests shall be October-15 September-15 for summer Terms; February-15 January-15 for first Term; and June-25 May-25 for second semester/second and third quarter. When submitting payment requests, the Institution shall certify that the Qualified Veteran meets the requirements of Section 2733.20, Grant Eligibility.

d) The reimbursement to Institutions for Illinois Veteran Grants is contingent upon available funding. Should General Assembly appropriations be insufficient to pay all claims, Institutions will be reimbursed in accordance with this subsection.

1) Summer Term claims received by the deadline date designated in subsection (c) will be paid, or prorated if funding is insufficient to pay all claims in full.

2) If funds remain after summer Term claims are paid, first semester and first quarter claims received by the designated deadline date will be paid, or prorated if funding is insufficient to pay all claims in full.

3) If funds remain after first semester and first quarter claims are paid, then second semester/second and third quarter claims received by the designated deadline date will be paid, or prorated if funds remaining are insufficient to pay all such

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claims in full.

4) If funds remain after second semester/second and third quarter claims are paid, claims received by ISAC after the designated deadline dates will be paid or prorated.

5) In the event that funds are not exhausted, claims for the difference between in-district and out-of-district tuition will be paid for recipients who do not qualify for Chargebacks, or prorated if funds remaining are insufficient to pay all such claims in full.

(Source: Amended at 18 Ill. Reg. _____, effective _____, 1994)

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NOTICE OF PROPOSED AMENDMENT(S)

1) The Heading of the Part: Merit Recognition Scholarship (MRS) Program

2) Code Citation: 23 Ill. Adm. Code 2761

3) Section numbers: Proposed Action:

2761.10	Amended
2761.20	Amended
2761.30	Amended

4) Statutory Authority: Implementing Section 30 and authorized by Section 30(h) of the Higher Education Student Assistance Act (Ill. Rev. Stat. 1991, ch. 144, pars. 3030 and 3030(h)) [110 ILCS 947/30 and 30(h)].

5) A Complete Description of the Subjects and Issues Involved: ISAC annually reviews its rules in order to respond to market changes and client suggestions, to implement state and federal statutory changes, and to clarify issues that have arisen during the previous year. In addition to making minor technical and grammatical changes throughout this Part, ISAC proposes the following substantive amendments: Section 2761.10(a) has been amended in accordance with Public Act 88-203, which became effective on August 5, 1993 and added national military service academies to the types of institutions at which a student can use this scholarship. Section 2761.20 now contains a definition of service academy for the convenience of clients who are interested in this program. Section 2761.30(a)(2) has been changed to comply with Public Act 88-69, which became effective on July 7, 1993 and requires that ISAC notify only those applicants who are reasonably assured of receiving a Merit Recognition Scholarship as determined by the annual funding levels recommended in the Governor's Budget.

6) Will this proposed amendment replace an emergency rule currently in effect? No.

7) Does this rulemaking contain an automatic repeal date? No.

8) Does this proposed amendment contain incorporations by reference? No.

9) Are there any other amendments pending on this Part? No.

10) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a state mandate as defined in Section 3(b) of the State Mandates Act (Ill. Rev. Stat. 1991, ch. 85, par 2203) [30 ILCS 805/3] and does not necessitate a local government to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

ILLINOIS STUDENT ASSISTANCE COMMISSION

NOTICE OF PROPOSED AMENDMENT(S)

Comments may be submitted in writing for a period of 45 days following publication of this notice. Comments should be submitted to:

Ms. Raquel C. Martinez
Compliance Counsel
Illinois Student Assistance Commission
1755 Lake Cook Road
Deerfield, Illinois 60015

12) Initial Regulatory Flexibility Analysis: This rulemaking does not affect small businesses.

The full text of the proposed amendments begin on the following page:

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NOTICE OF PROPOSED AMENDMENTS

REFERENCES

TITLE 23: EDUCATION AND CULTURAL RESOURCES
SUBTITLE A: EDUCATION
SUBTITLE B: DISTANCE COMMISSION

CHAPTER XIX: ILLINOIS STUDENT ASSISTANCE COMMISSION

PART 2761

PART 2/61
MERIT RECOGNITION SCHOLARSHIP (MRS) PROGRAM

Section	Summary and Purpose
2761.10	Definitions
2761.20	Program Procedures
2761.30	Program Procedures (Repealed)
2761.40	

2761.40
Program procedures.
AUTHORITY: Implementing Section 30 and authorized by Section 30(h) of the Higher Education Student Assistance Act (Ill. Rev. Stat. 1991, ch. 144, pars. 3030 and 3030(h)) [110 ILCS 94/30 and 30(h)].

3030(h)) [110 ILCS 94/750 and 94/751].

SOURCE: Adopted at 9 Ill. Reg. 10277, effective July 5, 1985; amended at 9 Ill. Reg. 20849, effective January 1, 1986; amended at 11 Ill. Reg. 3220, effective Reg. 20849, effective January 1, 1986; amended at 11 Ill. Reg. 14127, effective August 10, 1987; January 29, 1987; amended at 11 Ill. Reg. 11563, effective July 1, 1988; transferred from Chapter amended at 12 Ill. Reg. 11563, effective July 1, 1988; transferred from Chapter XIX, 23 Ill. Reg. 86-168, IX, 23 Ill. Adm. Code 1/61 (State Scholarship Commission) pursuant to P.A. 86-168, Adm. Code 2761 (Illinois Student Assistance Commission) amended at 14 Ill. Reg. 10578, effective July 1, 1989, at 13 Ill. Reg. 17803; amended at 14 Ill. Reg. 10578, effective July 1, 1990; amended at 16 Ill. Reg. 11290, effective July 1, 1992; effective July 1, 1990; amended at 16 Ill. Reg. 11290, effective July 1, 1992; amended at 17 Ill. Reg. 10579, effective July 1, 1993; amended at 18 Ill. Reg. 10579, effective July 1, 1994.

Section 2761.10 Summary and Purpose

- 2/6/10 Summary and Purpose
- a) The Merit Recognition Scholarship Program encourages and rewards the distinguished academic achievement of Illinois high school graduates, without regard to financial need. The scholarship is a \$1,000 award which must be used for enrollment at an approved Illinois postsecondary institution of any Service Academy.
- b) This Part establishes rules which govern the Merit Recognition Scholarship Program. Additional rules and definitions are contained in the General Provisions Part at 23 Ill. Adm. Code 7000. Defined terms are indicated by the first letter being capitalized. statutory language is italicized.

Statutory language is italicized.
Amended at 18 Ill. Reg. _____, effective _____, 1994.)

Section 2/61.20 Definitions

.20 Definitions

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will usually be the student's next-to-last Term.

(Source: Amended at 18 Ill. Reg. _____, effective _____, 1994)

Section 2761.30 Program Procedures

a) In February of every year, Approved High Schools in Illinois shall certify to the Illinois Student Assistance Commission (ISAC) the names of students who are Eligible Applicants.

1) The certification of names shall be submitted on forms provided by ISAC. Certifications submitted by Approved High Schools shall be subject to audit by ISAC.

2) ISAC shall then promptly notify those Eligible Applicants who are reasonably assured of receiving Merit Recognition Scholarships in accordance with annual funding levels recommended in the Governor's Budget.

3) Eligible Applicants must have completed their Seventh Semester of instruction at an Approved High School in Illinois.

b) Eligible Applicants shall be sent a Merit Recognition Scholarship application which must be completed by the student and the postsecondary institution attended by the Applicant. A complete application must be received by ISAC within one year of High School Graduation but absolutely no later than June 15th of the Academic Year immediately following graduation from the Approved Illinois High School. Should the recipient transfer to a different institution after submission of the application, the enrollment transfer must be reported to ISAC in order to receive scholarship payments.

c) ISAC shall disburse scholarship funds in two increments based on the Terms financed by the scholarship. Scholarship funds may be used to finance expenses for a summer Term.

1) The application form constitutes a request for payment of first Term benefits. ISAC shall issue payment request rosters for Institutions to request payment for subsequent Terms.

2) Funds shall be remitted to Institutions on behalf of the Qualified Students. When requesting payment of scholarship funds, the Institution shall certify that the recipient is: a U.S. Citizen or Eligible Noncitizen; a Resident of Illinois; of Good Moral Character; accepted for enrollment on at least a half-time basis; not the recipient of a baccalaureate degree.

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3) Upon receipt of scholarship funds, the Institution shall verify the recipient's enrollment status. If the recipient is Enrolled, the Institution may credit the disbursement funds to the recipient's account for expenses then due and payable. The balance of the disbursement shall be released to the recipient.

4) If the recipient has withdrawn from enrollment or drops to less than half-time enrollment prior to disbursement, the Institution shall return the funds to ISAC.

d) Scholarship funds are applicable to two semesters or three quarter Terms and must be used for educational expenses, including, but not limited to, Tuition and fees, room and board, books and supplies, Required Service Academy uniforms, and travel and personal expenses related to the student's recipient's enrollment.

e) Should the recipient withdraw from enrollment during the first-Term financed by the scholarship, the recipient shall return the funds disbursed to ISAC.

f) Notwithstanding the previous provisions of this Section, students who graduated during the 1986-87 or 1987-88 school year whose grade point averages were at or above the 90th percentile of their high school class and who were otherwise eligible to apply for a scholarship under this Part shall:

1) be eligible for a scholarship in the amount of \$500;

2) have had their names certified as Eligible Applicants by Approved High Schools on forms submitted to ISAC;

3) have submitted an application to the Institution at which they are currently enrolled by November 15th of the academic year in which funds are appropriated for this purpose;

4) have Institutions verify that the Qualified Student is: a U.S. Citizen or Eligible Noncitizen; a Resident of Illinois; of Good Moral Character; accepted for enrollment on at least a half-time basis; and is not the recipient of a baccalaureate degree;

5) have the scholarships awarded under this subsection provided by a separate appropriation of the General Assembly; and

6) have a scholarship awarded by ISAC in order of decreasing percentile as determined by their 7th semester cumulative high school grade point average, if funds appropriated are

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insufficient to provide all Qualified Students with an award.

(Source: Amended at 18 Ill. Reg. _____, effective _____, 1994)

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NOTICE OF PROPOSED AMENDMENT(S)

1) The Heading of the Part: Minority Teachers Of Illinois (MTI) Scholarship Program

2) Code Citation: 23 Ill. Adm. Code 2763

3) Section numbers: Proposed Action:

2763.20 Amended
2763.40 Amended
2763.50 Amended

4) Statutory Authority: Implementing Section 50 of the Higher Education Student Assistance Act (Ill. Rev. Stat. 1991, ch. 144, par. 3050) (See Public Acts 87-997 and 87-1004, effective September 3, 1992 and P.A. 87-0920, effective January 1, 1993) [110 ILCS 947/50] and authorized by Section 20(f) of the Higher Education Student Assistance Act (Ill. Rev. Stat. 1991, ch. 144, par. 3020(f)) [110 ILCS 947/20].

5) A Complete Description of the Subjects and Issues Involved: ISAC annually reviews its rules in order to respond to market changes and client suggestions, to implement state and federal statutory changes, and to clarify issues that have arisen during the previous year. In addition to making minor technical and grammatical changes throughout this Part, ISAC proposes the following substantive amendments: The definition of "eligible applicant," which is contained in Section 2763.20, has been changed in accordance with Public Act 88-231. That law became effective on August 6, 1993 and expanded the eligibility for MTI scholarships to those students who have received a General Educational Development (GED) Certificate. The definition of "qualified student" in Section 2763.20 has also been expanded to include last semester seniors who are enrolled on less than a full-time basis, in response to P.A. 88-231. The application deadline date in Section 2763.40(b) has been changed from September 15 to August 1 as a result of ISAC's continued efforts to reflect consistent deadline dates for all of the statutory programs. Section 2763.40(d) has been amended so that students are not penalized if institutions are slow in responding to inquiries from ISAC or make errors during the application process. Section 2763.40(f) has been modified to match the new definition of eligible applicant and to comply with P.A. 88-231. Section 2763.40(h)(6) has been added in response to P.A. 88-231, which also enables students to defer repayment if they pursue their studies in other than a teaching-related curriculum. Section 2763.40(j) has been added since P.A. 88-231 identified the General Revenue Fund as the place for ISAC to deposit funds that are collected from repayments. Section 2763.50(b) now allows a student who attends school for only one semester to receive up to the maximum award of \$7,000, if the scholarship does not exceed the recipient's cost of attendance.

6) Will this proposed amendment replace an emergency rule currently in effect? No.

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- 7) Does this rulemaking contain an automatic repeal date? No.
- 8) Does this proposed amendment contain incorporations by reference? No.
- 9) Are there any other amendments pending on this Part? No.
- 10) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a state mandate as defined in Section 3(b) of the State Mandates Act (Ill. Rev. Stat. 1991, ch. 85, par 2203) [30 ILCS 805/3] and does not necessitate a local government to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues.
- 11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Comments may be submitted in writing for a period of 45 days following publication of this notice. Comments should be submitted to:

Ms. Raquel G. Martinez
Compliance Counsel
Illinois Student Assistance Commission
1755 Lake Cook Road
Deerfield, Illinois 60015

- 12) Initial Regulatory Flexibility Analysis: This rulemaking does not affect small businesses.

The full text of the proposed amendments begin on the following page:

ILLINOIS REGISTER
ILLINOIS STUDENT ASSISTANCE COMMISSION
NOTICE OF PROPOSED AMENDMENTS
TITLE 23: EDUCATION AND CULTURAL RESOURCES
SUBTITLE A: EDUCATION
CHAPTER XIX: ILLINOIS STUDENT ASSISTANCE COMMISSION

Part 2763
MINORITY TEACHERS OF ILLINOIS (MTI) SCHOLARSHIP PROGRAM

Section	Summary and Purpose
2763.10	Definitions
2763.20	Minority Scholar Eligibility
2763.30	Application Procedures
2763.40	Institutional Procedures
2763.50	

AUTHORITY: Implementing Section 50 of the Higher Education Student Assistance Act (Ill. Rev. Stat. 1991, ch. 144, par. 3050) (See Public Acts 87-997 and 87-1004, effective September 3, 1992 and P.A. 87-0920, effective January 1, 1993) [110 ILCS 947/50] and authorized by Section 20(f) of the Higher Education Student Assistance Act (Ill. Rev. Stat. 1991, ch. 144, par. 3020(f)) [110 ILCS 947/20].

SOURCE: Emergency rules adopted at 15 Ill. Reg. 15621, effective October 11, 1991, for a maximum of 150 days; emergency expired on March 9, 1992; adopted at 16 Ill. Reg. 7048, effective April 21, 1992; emergency amendments adopted at 16 Ill. Reg. 16326, effective September 28, 1992, for a maximum of 150 days; emergency expired on February 25, 1993; emergency amendment at 17 Ill. Reg. 175, effective January 1, 1993, for a maximum of 150 days; emergency expired on June 1, 1993; amended at 17 Ill. Reg. 10585, effective July 1, 1993; amended at 18 Ill. Reg. _____, effective _____, 1994.

Section 2763.20 Definitions

"Approved High School" - means any public high school located in this State; and any high school, located in the State or elsewhere (whether designated as a high school, secondary school, academy, preparatory school, or otherwise) which in the judgment of the Superintendent provides a course of instruction at the secondary level, and maintains standards of instruction, substantially equivalent to those of public high schools located in this state. (Section 10 of the Higher Education Student Assistance Act (Ill. Rev. Stat. 1991, ch. 144, par. 3010) (See P.A. 87-997, effective September 3, 1992)) [110 ILCS 947/10].

"Cost of Attendance" - defined at Section 472 of the Higher Education Act of 1965, as amended (20 U.S.C.A. 108711).

"Cumulative Grade Point Average" - means the average grade earned throughout a student's educational program. The calculation shall be consistent with the Institution's established policy or practice

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and shall be the same as that which is used for admission, placement, or other similar purposes.

"Eligible Applicant" - means a minority student who has graduated from high school or has received a General Educational Development Certification and has maintained a cumulative grade point average at the postsecondary level of no less than 2.5 on a 4.0 scale, and who by reason thereof is entitled to apply for scholarships to be awarded under this Section. (Section 50(a) of the Higher Education Student Assistance Act)

"Institution of Higher Learning" - means an educational organization located in this state which (1) provides at least an organized 2 year program of collegiate grade in liberal arts or sciences, or both, directly applicable toward the attainment of a baccalaureate degree, or, beginning with academic year 1972, a program in health education directly applicable toward the attainment of a certificate, diploma, or an associate degree, (2) either is (A) operated by this State, or (B) operated publicly or privately, not for profit, (3) in the judgment of the Commission meets the standards substantially equivalent to those of comparable institutions operated in this State, and (4) if so required by the Commission, uses the State as its primary guarantor of student loans made pursuant to the Higher Education Act of 1965. For otherwise eligible educational organizations which provide academic programs for incarcerated students, the terms "institution of higher learning", "qualified institutions", and "institution" shall specifically exclude academic programs for incarcerated students. (Section 10 of the Higher Education Student Assistance Act.)

"Minority Scholar" - means an individual who ISAC determined to be eligible to receive an MTI scholarship and who receives or has received assistance under this Part.

"Minority Student" - means a student who is either (i) Black (a person having origins in any of the black racial groups in Africa); (ii) Hispanic (a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean islands, regardless of race); (iii) Asian American (a person with origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, including Pakistan, and the Pacific Islands, including, among others, Hawaii, Melanesia, Micronesia and Polynesia); or (iv) Native American (a person who is a member of a federally or state recognized Indian tribe, or whose parents or grandparents have such membership) and to include the native people of Alaska. (Section 50(n) of the Higher Education Student Assistance Act.)

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"Qualified Student" - means a person (i) who is a resident of this State and a citizen or permanent resident of the United States; (ii) who is a minority student, as defined in this Section; (iii) who, as an eligible applicant, has made a timely application for a minority teaching scholarship under this Section; (iv) who is enrolled on a full time basis at the sophomore level or above until his or her last semester at a qualified Illinois institution of higher learning as an undergraduate student and has not received a baccalaureate degree, except that last semester seniors must enroll only for a minimum of 6 credit hours in order to maintain eligibility under this Section; (v) who is enrolled in a course of study leading to a teacher certification; (vi) who maintains a grade point average of no less than 2.5 on a 4.0 scale while enrolled at the postsecondary level; and (vii) who continues to advance satisfactorily toward the attainment of a degree. (Section 50(a) of the Higher Education Student Assistance Act.)

"Teacher Education Program" - means an undergraduate postsecondary course of study which, upon completion, qualifies a student to be certified as an elementary or secondary school teacher by the Illinois State Board of Education. For the purposes of a student who has completed less than four semesters/six quarters of postsecondary study, this includes a postsecondary course of study which leads to a Teacher Education Program.

(Source: Amended at 18 Ill. Reg. _____, effective _____, 1994)

Section 2763.40 Application Procedures

- a) Applications for the Minority Teachers of Illinois Scholarship Program are available from qualified Institutions of Higher Learning, state legislative and congressional offices, and ISAC's Springfield, Deerfield and Chicago offices.
- b) ISAC will mail renewal applications to all Qualified Students who received MTI Scholarships during the preceding Academic Year.
- c) A completed application must be received in ISAC's Deerfield office on or before September 15th of the August 1st immediately preceding the academic year for which the scholarship is being requested in order to receive priority consideration for a full-year, full-amount award.
- d) If the student section of an application is incomplete, notification will be sent to the Eligible Applicant. The Eligible Applicant will then have an opportunity to furnish the missing information; however, the application will only be considered for processing as of the date when it the student section is complete and received by

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ISAC. If the school section of an application is incomplete, ISAC will notify the Institution directly. When the school submits the missing information, ISAC will consider the application filed on the date that it was originally received.

e) Eligibility notification shall be sent to each Qualified Student who is selected as a Minority Scholar.

f) Eligible Applicants shall be required to furnish the postsecondary Institution ~~institution~~ at which they are enrolled with a copy of their high school transcripts, or any other documentation verifying high school graduation; or a copy of their General Educational Development Certificates.

g) During any academic year in which a Minority Scholar receives assistance under this Part, the Minority Scholar shall be required to sign a Teaching Agreement/Promissory Note prior to receipt of any scholarship assistance. The terms of the Teaching Agreement/Promissory Note shall include the following:

- 1) a pledge on the part of the recipient to teach one year for each year of scholarship aid received, or for any portion of a year for which aid was received, under this Part;
- 2) a stipulation that such teaching commitment will be fulfilled within the 10-year period following the termination of the undergraduate program for which the Minority Scholar received assistance under this Part;

3) a stipulation that such teaching commitment will be fulfilled at a nonprofit Illinois public, private, or parochial preschool, elementary school or secondary school at which no less than 30 percent of the enrolled students are Minority Students, as certified by the Illinois State Board of Education; and

4) a further stipulation that, if the teaching commitment is not fulfilled, the scholarship converts to a loan and the Minority Scholar must repay the entire amount of the scholarship(s) prorated according to the fraction of the teaching obligation not completed, plus interest at a rate equal to that defined by federal regulations and, if applicable, reasonable collection fees.

h) A Minority Scholar shall not be in violation of the teaching agreement, and thus not be required to commence repayment as set forth in subsection (g)(14) of this Section, if the recipient:

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1) enrolls as a full-time graduate student in a course of study related to teaching at a qualified Institution of Higher Learning;

2) serves, for not more than three years, as a member of the United States armed services;

3) is temporarily disabled, for not more than three years, as established by the sworn affidavit of a qualified physician;

4) is seeking and unable to find full-time employment as a teacher at a school that satisfies the criteria set forth in subsection (g)(3) of this Section, and is able to provide evidence of that fact; or

5) becomes permanently totally disabled as established by the sworn affidavit of a qualified physician.

6) withdraws from a course of study leading to a teacher certification but remains enrolled on a full-time basis in another academic discipline.

i) A Minority Scholar shall not be required to repay the amount of the scholarship(s) received if s/he becomes permanently totally disabled as established by the sworn affidavit of a qualified physician, (See e.g., 34 CFR 653.42(k)(i)) or if his or her representative provides ISAC with a death certificate or other evidence that the scholar has died.

j) All repayments collected from Minority Scholarship recipients shall be forwarded to the State Comptroller for deposit into the State's General Revenue Fund.

(Source: Amended at 18 Ill. Reg. _____, effective _____, 1994)

Section 2763.50 Institutional Procedures

a) The Institution shall submit the signed Application/Teaching Agreement/Promissory Note to ISAC on behalf of the Minority Scholar. The submission of the signed Application/Teaching Agreement/Promissory Note shall represent the Institution's request for payment.

b) ISAC shall disburse scholarship funds in two or three installments, depending on the number of Terms financed by the scholarship; except that, multiple disbursements shall not be required in cases where the applicant's eligibility is not determined until the final term of the ~~academic-year~~ Academic Year for which the scholarship is

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being awarded; or when a student is attending only one semester and the maximum award does not exceed the student's Cost of Attendance.

- c) Funds shall be remitted by ISAC to Institutions on behalf of Minority Scholars. When requesting payment of scholarship funds, the Institution shall certify to ISAC that the Applicant is a Qualified Student as defined in Section 2763.20 of this Part.
- d) Scholarship funds are applicable towards up to two semesters/three quarters of Full-time study within an Academic Year. Upon receipt of scholarship funds, the Institution shall verify the Scholar's enrollment status. If the Minority Scholar is Enrolled, the Institution may credit the scholarship funds to the recipient's account for expenses then due and payable. The balance of the disbursement shall be released to the Minority Scholar. If the Minority Scholar has withdrawn from enrollment, the Institution shall return the total amount of the scholarship to ISAC.

e) Scholarship Amount

- 1) In accordance with this subsection, the Institution at which the Minority Scholar is enrolled shall compute the size of the scholarship and submit a completed, certified Application/Teaching Agreement/Promissory Note. The Minority Scholar must have reviewed and signed the Application/Teaching Agreement/Promissory Note prior to the receipt of any scholarship assistance.
- 2) Minority Teachers of Illinois Scholarships are applicable only toward tuition and fee and room and board charges or commuter allowances, if applicable. The annual scholarship awarded to a Qualified Student must not exceed:
 - A) tuition and fees plus room and board expenses charged by the Institution (as reported to ISAC pursuant to 23 Ill. Adm. Code 2700.30(e), General Institutional Eligibility Requirements); or
 - B) tuition and fees plus the standard commuter allowance for students living off-campus (as reported to ISAC pursuant to 23 Ill. Adm. Code 2700.30(e)); or
 - C) a maximum of \$5,000.
- 3) The total amount of Minority Teachers of Illinois Scholarship assistance awarded to a Scholar in a given academic year, when added to the other financial aid available to the Minority Scholar for that year, cannot exceed the Cost of Attendance.

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- 4) In any Academic Year in which the Minority Scholar accepts financial assistance through the Paul Douglas Teacher Scholarship Program (23 Ill. Adm. Code 2762), the Minority Scholar shall not be eligible for scholarship assistance under this Part.

- 5) A Minority Scholar may receive grant assistance under the Monetary Award Program (23 Ill. Adm. Code 2735) only up to the amount by which the Minority Scholar's Cost of Attendance exceeds the amount of the scholarship.

(Source: Amended at 18 Ill. Reg. _____, effective _____, 1994)

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1) The Heading of the Part: Paul Douglas Teacher Scholarship Program

2) Code Citation: 23 Ill. Adm. Code 2762

3) Section numbers: Proposed Action:

2762.30 Amended
2762.40 Amended

4) Statutory Authority: Implementing and authorized by Section 551 et seq. of the Higher Education Act of 1965, as amended (20 U.S.C.A. 1111 et seq.), and Sections 20 (b) and (f) of the Higher Education Student Assistance Act (Ill. Rev. Stat. 1991, ch. 144, pars. 3020(b) and (f)) [110 ILCS 94/20(b) and (f)].

5) A Complete Description of the Subjects and Issues Involved: ISAC annually reviews its rules in order to respond to market changes and client suggestions, to implement state and federal statutory changes, and to clarify issues that have arisen during the previous year. In addition to making minor technical and grammatical changes throughout this Part, ISAC proposes the following substantive amendments: Section 2762.30(b)(2) has been amended to comply with new federal regulations that were published in the August 11, 1993 edition of the Federal Register. Those regulations permit to high school students who are scheduled to graduate by the end of the year in which the award is made to apply for Paul Douglas Scholarships. Section 2762.30(b)(3) has been updated to comply with the instructions that ISAC have received from the U.S. Department of Education (ED) which stated that graduate students qualify as well as undergraduates. Section 2762.30(b)(3)(A) has been changed so that it does not conflict with the revision to Section 2762.30(b)(2). Section 2762.30(d)(2) has been deleted, at the direction of ED, to remove the preference for students attending Illinois institutions in the event that there are insufficient funds to give scholarships to all qualified applicants. Section 2762.30(d)(5) has been modified to explain that students who did not apply for federal financial aid are not precluded from receiving this award but will be ranked along with those students who have been determined to have no financial need. Section 2762.40(b) now includes a common application deadline date of August 1 for all students, regardless of their enrollment status during the previous school year. Section 2762.40(b)(1) clarifies the fact that students who had not previously been designated as Paul Douglas Scholars should apply for federal financial aid to determine their need and thus, their rank within their relevant group. Section 2762.40(b)(2) has been amended because students with GEDs are also eligible for this scholarship. Section 2762.40(d) now matches the change in subsection (b) which relates to a common deadline date for all applications. Section 2762.40(e)(1) has been deleted since ISAC now uses one common form as the application, teaching agreement/promissory note and the school certification of eligibility. Section 2762.40(i) has had a phrase added which excuses a deceased scholar

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from repayment if his or her representative provides ISAC with appropriate documentation.

6) Will this proposed amendment replace an emergency rule currently in effect? No.

7) Does this rulemaking contain an automatic repeal date? No.

8) Does this proposed amendment contain incorporations by reference? No.

9) Are there any other amendments pending on this Part? No.

10) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a state mandate as defined in Section 3(b) of the State Mandates Act (Ill. Rev. Stat. 1991, ch. 85, par. 2203) [30 ILCS 805/3] and does not necessitate a local government to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Comments may be submitted in writing for a period of 45 days following publication of this notice. Comments should be submitted to:

Ms. Raquel G. Martinez
Compliance Counsel
Illinois Student Assistance Commission
1755 Lake Cook Road
Deerfield, Illinois 60015

12) Initial Regulatory Flexibility Analysis: This rulemaking does not affect small businesses.

The full text of the proposed amendments begin on the following page:

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NOTICE OF PROPOSED AMENDMENTS

TITLE 23: EDUCATION AND CULTURAL RESOURCES

CHAPTER XIX: ILLINOIS STUDENT ASSISTANCE COMMISSION

PART 2762

PAUL DOUGLAS TEACHER SCHOLARSHIP PROGRAM

Section

2762.10 Summary and Purpose
 2762.20 Definitions
 2762.30 Scholar Eligibility
 2762.40 Program Procedures

AUTHORITY: Implementing and authorized by Section 551 et seq. of the Higher Education Act of 1965, as amended (20 U.S.C.A. 1111 et seq.), and Sections 20 (b) and (f) of the Higher Education Student Assistance Act (Ill. Rev. Stat. 1991, ch. 144, pars. 3020(b) and (f)) [110 ILCS 94/20(b) and (f)].

SOURCE: Emergency Rule adopted at 10 Ill. Reg. 12690, effective July 18, 1986, for a maximum of 150 days; adopted at 11 Ill. Reg. 3159, effective January 29, 1987; amended at 12 Ill. Reg. 11559, effective July 1, 1988; amended at 13 Ill. Reg. 8650, effective July 1, 1989; transferred from Chapter IX, 23 Ill. Adm. Code 1762 (State Scholarship Commission) to Chapter XIX, 23 Ill. Adm. Code 2762 (Illinois Student Assistance Commission) pursuant to P.A. 86-168, effective July 1, 1989, at 13 Ill. Reg. 17865; amended at 16 Ill. Reg. 11313, effective July 1, 1992; amended at 17 Ill. Reg. 10611, effective July 1, 1993; amended at 18 Ill. Reg. _____, effective _____, 1994.

Section 2762.30 Scholar Eligibility

- a) ISAC shall accept applications to be a Paul Douglas Teacher Scholar in accordance with Section 2762.40, Program Procedures.
- b) From among the timely Applicants, ISAC shall identify the Qualified Applicants. A "Qualified Applicant" is defined as an individual who meets the requirements of this subsection.
 - 1) A Qualified Applicant must be a United States Citizen or an Eligible Noncitizen, and a Resident of Illinois.
 - 2) A Qualified Applicant must be a high school graduate, or a student scheduled to graduate from high school by the end of the school term in which the award is made, who:

- A) graduated in the top ten percent of his/her graduating class; or
- B) received a General Educational Development (GED) test

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score recognized by the General Educational Development Testing Service as the equivalent to ranking in the top ten percent of the United States' high school graduates.

- 3) A Qualified Applicant must be Enrolled, or accepted for enrollment, as an undergraduate or graduate student seeking initial certification in a Teacher Education Program.

A) The Applicant must be:

- i) Enrolled or accepted for enrollment on a Full-time basis.
- ii) Enrolled in the last academic term before graduation or be engaged in student teaching and maintain satisfactory progress in accordance with the Institution's Satisfactory Academic Progress Policy.

- B) Enrollment must be with a postsecondary Institution that is approved by the Department of Education to participate in federal student assistance programs. (See, e.g., 34 CFR 600.10, 600.20, 668.12.)

- c) Applicants will be notified whether they are Qualified Applicants. A non-qualified applicant may appeal in accordance with 23 Ill. Adm. Code 2700.70, Appeal Procedures.

- d) Recipients shall be selected from among the Qualified Applicants on the basis of the following criteria:

- 1) Postsecondary Academic Level. Awards will be made first to renewing applicants, then to all seniors, then to all juniors, then to all sophomores, and then to all freshmen.

- 2) --- Institution location --- If these are insufficient funds to award scholarships to all Qualified Applicants, those enrolled in Illinois Institutions will receive priority over Applicants attending out-of-state institutions.

- 2) Special Consideration. If there are insufficient funds to award scholarships to all Qualified Applicants attending Illinois institutions, ISAC shall give special consideration to Qualified Applicants who are within the same academic level and who:

- A) intend to teach or provide related services to students with disabilities;

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- B) intend to teach limited English proficient students;
- C) intend to teach preschool age children;
- D) intend to teach in schools servicing inner city or rural or geographically isolated areas;

E) intend to teach in curricular areas or geographic areas where there are demonstrated shortages of qualified teachers; or

F) are from disadvantaged backgrounds, including racial and ethnic minorities and individuals with disabilities and are underrepresented in the teaching profession or in the curricular areas in which they are preparing to teach.

34) Shortage of Teachers. If there are insufficient funds to award scholarships to all Qualified Applicants within a given Academic Level who are entitled to special consideration, awards will be made first to all Applicants Enrolled in an academic discipline in which Illinois has a shortage of teachers, as determined annually by the Illinois State Board of Education. (See: 23 Ill. Adm. Code 54, Subpart D.) Funds will next be awarded to Applicants at the same Academic Level in nonshortage disciplines.

45) The Expected Family Contribution (EFC) derived from Federal Methodology. If funds are insufficient to make awards to all Applicants who are entitled to special consideration, to all Applicants in shortage disciplines or to all Applicants in non-shortage disciplines, within an Academic Level, Applicants will be ranked in order of the Applicant's EFC, from lowest to highest. (See: Section 2762.40(b); Title IV, Part F of the Higher Education Act of 1965, as amended, (20 U.S.C.A. 1087kk).) Awards will be made within the relevant group in order of increasing EFC. Those Applicants who did not apply for federal student financial aid, and therefore do not have an EFC, are eligible to receive this scholarship but will be ranked last in their relevant group.

e) A Scholar shall receive a scholarship renewal provided the Scholar continues to meet the requirements of subsections (b)(1) and (3) of this Section. No Scholar may receive more than eight semesters/twelve quarters of scholarship assistance. A Scholar shall not receive a scholarship renewal if the Scholar remains at the same academic level for more than two years.

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- f) The total number of Scholars selected is contingent upon the available funds and the number of scholarship renewals. All scholarships and scholarship renewals are contingent upon sufficient appropriation.

(Source: Amended at 18 Ill. Reg. _____, effective _____, 1994)

Section 2762.40 Program Procedures

a) ISAC Applications for the Paul Douglas Teacher Scholarship Program are available for distribution to students from: approved High Schools in Illinois; offices of Congressional Representatives from the State of Illinois; offices of ISAC in Springfield, Chicago, and Deerfield; and; postsecondary Institutions throughout Illinois.

b) A completed application must be received in ISAC's Deerfield office, from a student who was enrolled in a postsecondary institution during the previous regular school year; on or before June 1 preceding the Academic Year for which the scholarship would be available to that student. Applicants who were not enrolled during the previous regular school year and who would be using the scholarship at the freshman-Academic-Level must submit a completed application on or before August 1 preceding the Academic Year for which the scholarship would be available. is being requested in order to receive priority consideration.

1) All first-time Applicants who had not previously been designated as Scholars should must also apply for federal student financial aid to determine EFC for the purpose of determining their rank within their relevant group. (See: 20 U.S.C.A. 1070a.)

2) First-time Applicants must also provide their postsecondary Institution a copy of their high school transcripts, or any other documentation which verifies rank in class upon high school graduation, or documentation showing their GED test scores. The Institution shall certify to ISAC whether the Applicant is a Qualified Applicant as defined at Section 2762.30(b).

c) A congratulatory letter shall be sent to each Qualified Applicant who is selected as a Scholar. A listing of Scholars shall be made available to Institutions, members of Congress, and to the media.

d) Renewal applications are mailed annually to eligible Scholars and must be submitted to ISAC on or before August 1 preceding the Academic Year for which the scholarship is being requested in order to receive priority consideration. the deadline-stated-on-the

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Renewal-application:

- e) Prior to receiving scholarship assistance for any Academic Year, the Scholar must sign a Teaching Commitment Agreement/Promissory Note: that is submitted to ISAC.

1)-----The Institution shall submit the signed Teaching Commitment Agreement/Promissory Note to ISAC:--

- 12) The Teaching Commitment Agreement/Promissory Note shall require the Scholar to either:

- A) fulfill the teaching requirements within ten years after completing the postsecondary education degree program for which the scholarship was awarded, or
- B) repay all or part of the scholarship, plus interest, as provided by Federal Regulations. (See: 34 CFR 653.42 (c)(1).) The teaching requirement is prorated based upon whether the student received the scholarship for a semester or quarter rather than a full academic year.

- 23) The Teaching Commitment Agreement/Promissory Note shall include:

- A) a stipulation that the Scholar teach on a full-time basis for a period of not less than two years, for each year of assistance received, in a public or private nonprofit preschool, elementary, or secondary school, or
- B) a stipulation that the Scholar teach, on a full-time basis, children with disabilities or children with limited English proficiency in a private non-profit school, and
- C) a stipulation that teaching time shall be reduced to one-half if performed in a geographic area or an academic discipline certified as a "teacher shortage area" by the U.S. Secretary of Education.

f) Scholarship Amount

- 1) In accordance with this subsection, the Scholar's postsecondary Institution shall compute the amount of the scholarship and shall submit a request form. The Scholar must have reviewed and signed the Payment Request Form.
- 2) Except as otherwise provided in this subsection, scholarships

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shall be in the amount of \$5,000 if the student is enrolled for the full Academic Year. The maximum scholarship for one semester is \$2,500; the maximum scholarship for one quarter is \$1,666.67.

- 3) If a Paul Douglas Teacher Scholarship, when added to the amount the Scholar is to receive for the same Academic Year under Title IV of the Higher Education Act of 1965, as amended, (20 U.S.C.A. 1070 et seq.), would exceed the Scholar's cost of attendance, as defined at Section 472 of the Higher Education Act of 1965 (20 U.S.C.A. 108711), as amended, the Institution shall take the receipt of the scholarship into account in determining the student's eligibility for other federal financial aid programs.

- 4) In any Academic Year in which the Scholar accepts financial assistance through the Teacher Shortage Scholarship Program, the Mathematics or Science Teacher Scholarship Program (see: 23 Ill. Adm. Code 54: "Fellowship, Traineeship and Scholarship Programs"), or the Minority Teachers of Illinois Scholarship Aid Program (see: 23 Ill. Adm. Code 2763), the Scholar shall not be eligible for scholarship assistance under this Part.

- 5) A Scholar may receive grant assistance under the Monetary Award Program (23 Ill. Adm. Code 2735) only up to the amount by which the Scholar's cost of attendance exceeds the amount of the scholarship.

- g) Scholarship funds are applicable towards two semesters/three quarters of Full-time study within an Academic Year. Upon receipt of scholarship funds, the Institution shall verify that the Scholar continues to be Enrolled. The Institution may then credit scholarship funds to the recipient's account for expenses then due and payable. The balance of the scholarship funds shall be released to the Scholar. If the Scholar withdraws from enrollment, the Institution shall return the amount of the scholarship to ISAC for the semester(s) or quarter(s) not attended.

- h) A Scholar will be entitled to defer payments due, as outlined in subsection (e)(1)(2)(B) of this Section, during any period in which the recipient meets the conditions outlined in Section 528 of the Higher Education Act, as amended, or applicable federal regulations (see 34 CFR 653.62(g)).

- i) A Scholar shall be excused from repayment, for any scholarship assistance received under this Part, if the recipient becomes permanently totally disabled as established by the sworn affidavit of a qualified physician or if his or her representative provides

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ISAC with a death certificate or other evidence that the Scholar has died.

- j) Scholars and Applicants may appeal administrative decisions made pursuant to this Part in accordance with ISAC appeal procedures. (See 23 Ill. Adm. Code 2700.70).

(Source: Amended at 18 Ill. Reg. _____, effective _____, 1993)

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NOTICE OF PROPOSED AMENDMENT(S)

- 1) The Heading of the Part: Police Officer/Fire Officer Survivor Grant Program

- 2) Code Citation: 23 Ill. Adm. Code 2732

- 3) Section numbers: Proposed Action:

2732.10 Amended
2732.20 Amended

- 4) Statutory Authority: Implementing Section 55 and authorized by Section 20(f) of the Higher Education Student Assistance Act (Ill. Rev. Stat. 1991, ch. 144, pars. 3055 and 3020(f)) (See P.A. 87-997, effective September 3, 1992) [110 ILCS 947/55 and 20(f)].

- 5) A Complete Description of the Subjects and Issues Involved: ISAC annually reviews its rules in order to respond to market changes and client suggestions, to implement state and federal statutory changes, and to clarify issues that have arisen during the previous year. In addition to making minor technical and grammatical changes throughout this Part, ISAC proposes the following substantive amendments: The terms police officer and fire officer in Section 2732.10(a) have been put in lower case because they are neither defined terms, which are capitalized throughout ISAC rules, nor proper nouns. Section 2732.20(c) now includes an award limit, which is the same as that for the Monetary Award Program, and is currently set at \$3,500, for the convenience of clients who may not have access to Illinois statutes.

- 6) Will this proposed amendment replace an emergency rule currently in effect? No.

- 7) Does this rulemaking contain an automatic repeal date? No.

- 8) Does this proposed amendment contain incorporations by reference? No.

- 9) Are there any other amendments pending on this Part? No.

- 10) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a state mandate as defined in Section 3(b) of the State Mandates Act (Ill. Rev. Stat. 1991, ch. 85, par 2203) [30 ILCS 805/3] and does not necessitate a local government to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues.

- 11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Comments may be submitted in writing for a period of 45 days following publication of this notice. Comments should be submitted to:

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Ms. Raquel G. Martinez
Compliance Counsel
Illinois Student Assistance Commission
1755 Lake Cook Road
Deerfield, Illinois 60015

- 12) Initial Regulatory Flexibility Analysis: This rulemaking does not affect small businesses.

The full text of the proposed amendments begin on the following page:

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NOTICE OF PROPOSED AMENDMENTS

TITLE 23: EDUCATION AND CULTURAL RESOURCES

SUBTITLE A: EDUCATION

CHAPTER XIX: ILLINOIS STUDENT ASSISTANCE COMMISSION

PART 2732

POLICE OFFICER/FIRE OFFICER SURVIVOR GRANT PROGRAM

Section
2732.10
2732.20

Summary and Purpose
Program Procedures

AUTHORITY: Implementing Section 55 and authorized by Section 20(f) of the Higher Education Student Assistance Act (Ill. Rev. Stat. 1991, ch. 144, pars. 3055 and 3020(f)) (See P.A. 87-997, effective September 3, 1992) [110 ILCS 947/55 and 20(f)].

SOURCE: Adopted at 9 Ill. Reg. 20873, effective January 1, 1986; amended at 11 Ill. Reg. 3239, effective January 29, 1987; transferred from Chapter IX, 23 Ill. Adm. Code 1732 (State Scholarship Commission) to Chapter XIX, 23 Ill. Adm. Code 2732 (Illinois Student Assistance Commission) pursuant to P.A. 86-168, effective July 1, 1989, at 13 Ill. Reg. 17866; amended at 14 Ill. Reg. 10585, effective July 1, 1990; amended at 17 Ill. Reg. 10620, effective July 1, 1993; amended at 18 Ill. Reg. _____, effective _____, 1994.

Section 2732.10 Summary and Purpose

- a) If an Illinois police officer, police officer, fire officer or fire officer, fire officer was declared killed in the line of duty, the surviving spouse and children of the deceased may receive undergraduate grant assistance under this Part.

- b) This Part establishes Rules which govern the Police Officer/Fire Officer Survivor Grant Program. Additional Rules and definitions are contained in the General Provisions Part at 23 Ill. Adm. Code 2700. Defined terms are indicated by the first letter being capitalized.

(Source: Amended at 18 Ill. Reg. _____, effective _____, 1994)

Section 2732.20 Program Procedures

- a) Surviving children must be at or under the age of twenty-five at the time of enrollment. The surviving children must be the natural or adopted children of the deceased. Step-children are ineligible.
- b) Recipients must be Citizens or Eligible Noncitizens of the United States, and Residents of Illinois.

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- c) Grant amounts shall be calculated in accordance with Sections 35(c)(1) and (2) of the Higher Education Student Assistance Act (Ill. Rev. Stat. 1991, ch. 144, par. 3035(c)(1) and (2)) (See P.A. 87-997, effective September 3, 1993) [110 ILCS 947/35(c)(1) and (2)] which governs the Monetary Award Program (MAP). Grants shall not exceed the statutory MAP grant for that Academic Year. Financial need is not a criterion.
- d) Grants may be used at any postsecondary Institution approved for participation in the Monetary Award Program, provided the Applicant is Enrolled on at least a half-time basis and is maintaining Satisfactory Academic Progress. (See: 23 Ill. Adm. Code 2735.60.) Benefits are limited to the equivalent of ten semesters or fifteen quarters of payment.
- e) Applicants shall file a biographical application, identifying the deceased Police Officer/Fire Officer and will be required to submit a death certificate. Once eligibility has been established on behalf of all eligible dependents in the family, an annual application identifying the Institution to be attended is required.

(Source: Amended at 18 Ill. Reg. _____, effective _____, 1994)

ILLINOIS STUDENT ASSISTANCE COMMISSION

NOTICE OF PROPOSED AMENDMENT(S)

- 1) The Heading of the Part: Student To Student (STS) Program Of Matching Grants
- 2) Code Citation: 23 Ill. Adm. Code 2770
- 3) Section numbers: Proposed Action:
2770.30 Amended
- 4) Statutory Authority: Implementing Section 65 and authorized by the Section 20(f) of the Higher Education Student Assistant Act (Ill. Rev. Stat. 1991, ch. 144, pars. 3065 and 3020(f)) (See P.A. 87-997, effective September 3, 1992) [110 ILCS 947/65 and 20(f)].
- 5) A Complete Description of the Subjects and Issues Involved: ISAC annually reviews its rules in order to respond to market changes and client suggestions, to implement state and federal statutory changes, and to clarify issues that have arisen during the previous year. In addition to making minor technical and grammatical changes throughout this Part, ISAC proposes the following substantive amendments: Section 2770.30(o) has had the due date for annual reports changed from September 15 to August 15. This new date matches more closely with ISAC's year end reporting schedule to the Illinois Board of Higher Education.
- 6) Will this proposed amendment replace an emergency rule currently in effect? No.
- 7) Does this rulemaking contain an automatic repeal date? No.
- 8) Does this proposed amendment contain incorporations by reference? No.
- 9) Are there any other amendments pending on this Part? No.
- 10) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a state mandate as defined in Section 3(b) of the State Mandates Act (Ill. Rev. Stat. 1991, ch. 85, par 2203) [30 ILCS 805/3] and does not necessitate a local government to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues.
- 11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Comments may be submitted in writing for a period of 45 days following publication of this notice. Comments should be submitted to:

Ms. Raquel C. Martinez
Compliance Counsel
Illinois Student Assistance Commission

ILLINOIS STUDENT ASSISTANCE COMMISSION

NOTICE OF PROPOSED AMENDMENT(S)

1755 Lake Cook Road
Deerfield, Illinois 60015

- 12) Initial Regulatory Flexibility Analysis: This rulemaking does not affect small businesses.

The full text of the proposed amendments begin on the following page:

ILLINOIS STUDENT ASSISTANCE COMMISSION

NOTICE OF PROPOSED AMENDMENTS

TITLE 23: EDUCATION AND CULTURAL RESOURCES
SUBTITLE A: EDUCATION

CHAPTER XIX: ILLINOIS STUDENT ASSISTANCE COMMISSION

PART 2770

STUDENT TO STUDENT (STS) PROGRAM OF MATCHING GRANTS

Section
2770.10
2770.20
2770.30

Summary and Purpose
Definitions
Program Procedures and Requirements

AUTHORITY: Implementing Section 65 and authorized by the Section 20(f) of the Higher Education Student Assistant Act (Ill. Rev. Stat. 1991, ch. 144, pars. 3065 and 3020(f)) (See P.A. 87-997, effective September 3, 1992) [110 ILCS 94/7/65 and 20(f)].

SOURCE: Adopted at 4 Ill. Reg. 6, p. 221, effective January 30, 1980; codified at 7 Ill. Reg. 9925; transferred from Chapter IX, 23 Ill. Adm. Code 1770 (State Scholarship Commission) to Chapter XIX, 23 Ill. Adm. Code 2770 (Illinois Student Assistance Commission) pursuant to P.A. 86-168, effective July 1, 1989, at 13 Ill. Reg. 17869; amended at 16 Ill. Reg. 11329, effective July 1, 1992; amended at 17 Ill. Reg. 10632, effective July 1, 1993; amended at 18 Ill. Reg. _____, effective _____, 1994.

Section 2770.30 Program Procedures and Requirements

- a) An eligible program is an organized, need-based monetary award (gift assistance) program for undergraduate students at an Illinois College or public University. The funds for those programs must be derived from Voluntary Contributions raised by students from students of that College or University according to a plan developed and approved by the students and consistent with College or University policies.
- b) Voluntary Contributions can be obtained from graduate students; the assistance program, however, can aid only undergraduates. A portion of the total contribution can be used to aid graduate students. Funds set aside for graduate students will not be matched by the Commission.
- c) Students shall approve the plan for raising Voluntary Contributions by a majority of those voting in a campus-wide referendum.
- d) The contributions, to be eligible for matching funds, must be voluntary (as contrasted to a non-refundable fee or charge). Only those Voluntary Contributions made by enrolled students of the

ILLINOIS STUDENT ASSISTANCE COMMISSION

NOTICE OF PROPOSED AMENDMENTS

College or University are eligible for matching. If any fund raising activity yields contributions from other individuals or organizations, the Voluntary Contributions by enrolled students must be clearly identifiable.

e) Particular care must be employed in implementing contribution plans that generate contributions from non-students. The law leaves no latitude in this regard. Special cash receipt systems must be used to make certain that student contributions are clearly identifiable.

f) No eligible contribution can exceed \$9.00 per academic year.

g) The \$1,000 annual limit on a STS award shall be applicable to all terms including the summer term.

h) Only students who demonstrate need by some nationally recognized needs analysis system can be considered for STS matching grants.

i) STS funds can be used for undergraduates who are otherwise eligible for an ISAC monetary award but have completed their ten (10) semesters or fifteen (15) quarters of eligibility.

j) Each institution desiring to participate in this program shall inform ISAC, annually in writing, by the deadline specified by the Commission. The method of seeking student approval of a fund raising plan shall be included in such letter.

k) A claim for matching funds can be submitted to ISAC by dates specified by the Commission. The initial claim shall include:

- 1) the amount of the claim;
- 2) how general student approval was obtained;
- 3) how funds were collected;
- 4) the steps employed to insure that student contributions were voluntary; and
- 5) documentation that the claim includes only Voluntary Contributions by enrolled students.

l) A supplementary claim can be filed after a filing date for the purpose of adjusting a regular claim filed earlier.

m) A pro-rata distribution, if any, will be determined in accordance with general Commission action.

ILLINOIS STUDENT ASSISTANCE COMMISSION

NOTICE OF PROPOSED AMENDMENTS

n) After ISAC has reviewed a claim and computed the proration, ISAC shall process the necessary voucher for a check payable to the College or University for the awards.

o) Each participating College or University shall submit to ISAC an annual report, by not later than September-15 August 15, following the award year, of the activities, operations, and results of its STS grant program. ISAC shall forward a copy of such report to the Illinois Board of Higher Education.

(Source: Amended at 18 Ill. Reg. _____, effective _____, 1994)

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF ADOPTED AMENDMENTS

1) The Heading of the Part: Pay Plan2) The Code Citation: 80 Ill. Adm. Code 3103) Section Numbers:

310.290
310.450
310.455
310.530
310.540
310. Appendix C
310. Appendix D
310. Appendix G

Adopted Action:

Amended
Amended
Amended
Amended
Amended
Amended
Amended
Amended

4) Statutory Authority:

Authorized by Section 8a(2) of the Personnel Code (Ill. Rev. Stat. 1991, ch. 127, par. 63b108a.2) [20 ILCS 415/8a-2]

5) Effective Date of Amendment: January 18, 19946) Does this rulemaking contain an automatic repeal date? Yes ☒ No ☐
If "yes", please specify date:7) Does this amendment contain incorporation by reference? No
If "yes", was a copy of the approval form issued by JCAR attached to this rulemaking?

These amendments do not contain any incorporations by reference.

8) Date filed in Agency's Principal Office: January 18, 19949) Notice of Proposal Published in Illinois Register

September 10, 1993, Issue #37, 17 Ill. Reg. 14314

10) Has JCAR issued a Statement of Objections to this rule? No
If answer is "yes", please complete the following:A) Statement of Objection

(Issue Date)

Ill. Reg.

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF ADOPTED AMENDMENTS

B) Agency Response: _____, Ill. Reg. _____
(Issue Date)C) Date Agency Response Submitted for Approval to JCAR?11) Difference between proposal and final version

Changes were made to Sections 310.450 and 310.530 to comply with language changes made by the Joint Committee on Administrative Rules. In Section 310.450, paragraph b, #2, the word "Section" was changed to "Subsection" in reference to 310.450 (d). Also, in Section 310.450, paragraph f, the word "Certificate" has been changed to "Certification"

In Section 310.530, paragraph e, first sentence, the word "their" was changed to "his or her" in the third sentence, the word "their" was changed to "he"

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR?

Yes

13) Will these Amendments replace an emergency amendment currently in effect? Yes14) Are there any amendments pending to this part? Yes

Section Numbers	Proposed Action	Ill. Reg. Citation
310.40	Amended	17 Ill. Reg. 21233 (December 17, 1993)
310.270	Amended	17 Ill. Reg. 21233 (December 17, 1993)
310.280	Amended	17 Ill. Reg. 21233 (December 17, 1993)
310.490	Amended	17 Ill. Reg. 21233 (December 17, 1993)
310. Appendix A, Table T	Amended	17 Ill. Reg. 21233 (December 17, 1993)

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF ADOPTED AMENDMENTS

15) Summary and Purpose of Amendment:

The following amendments to the Department of Central Management Services' Pay Plan reflect the Fiscal Year 1994 salary changes for those employees subject to the Merit Compensation System Salary Schedule.

In Section 310.290, Out-of-State or Foreign Service Rate, the salary ranges were increased to maintain the same differential above the appropriate in-state salary for that salary grade for that title for Fiscal Year 1994.

The Senior Public Service Administrator was added to Section 310.290 with the salary range of \$4,281 - 9,485/monthly for the State of California and New Jersey, and \$3,787 - 8,390/monthly for all other states. This class replaces the Revenue Assistant Audit Field Manager and Revenue Field Audit Manager titles.

In Section 310.450, Procedures for Determining Annual Merit Increases (paragraph d), a revision was made to reflect that only individuals evaluated at the Category 5 level shall not receive an increase in their present salary.

In Section 310.455, Intermittent Merit Increase, the intermittent merit increases are still suspended but the reference to the date was deleted.

In Section 310.530, Implementation (paragraph a), a revision was made to reflect the new fiscal year. In paragraph e), the reference to any employee with a performance review date of September 1, 1992, was deleted.

In Section 310.540, Annual Merit Increase Guidechart, the guidechart was revised to reflect the changes in allowable percentages in salary increases to the level of performance.

In Section 310. Appendices C and D, the Medical Administrator Rates and the Merit Compensation System Salary Schedule, the salary ranges for those employees subject to the Merit Compensation section of the Pay Plan were increased by 4% on the minimum salary and 3% on the maximum salary for Fiscal Year 1994. The "Merit Pay Zone Limit" was being adjusted to maintain a 5% differential above the maximum salary.

In Section 310. Appendix G, Senior Public Service Administrator Salary Schedule, the minimum salary of Level I was revised by 4% from \$38,000 to \$39,520. The maximum salaries of both Level I and II were revised by 3% from \$65,000 to \$66,950 and \$85,000 to \$87,550, respectively, for August 16, 1993.

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF ADOPTED AMENDMENTS

16) Information and questions regarding these adopted amendments shall be directed to:

Name: Mr. Michael Murphy
Address: Department of Central Management Services
Division of Technical Services
504 William G. Stratton Building
Springfield, Illinois 62706

Telephone: (217) 782-5601

The full text of the Adopted Amendment(s) begins on the next page.

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF ADOPTED AMENDMENTS

TITLE 80: PUBLIC OFFICIALS AND EMPLOYEES
 SUBTITLE B: PERSONNEL RULES, PAY PLANS, AND
 POSITION CLASSIFICATIONS
 CHAPTER I: DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

PART 310
 PAY PLAN

SUBPART A: NARRATIVE

Section	
310.20	Policy and Responsibilities
310.30	Jurisdiction
310.40	Pay Schedules
310.50	Definitions
310.60	Conversion of Base Salary to Pay Period Units
310.70	Conversion of Base Salary to Daily or Hourly Equivalents
310.80	Increases in Pay
310.90	Decreases in Pay
310.100	Other Pay Provisions
310.110	Implementation of Pay Plan Changes for Fiscal Year 1994
310.120	Interpretation and Application of Pay Plan
310.130	Effective Date
310.140	Reinstitution of Within Grade Salary Increases
310.150	Fiscal Year 1985 Pay Changes in Schedule of Salary Grades, effective July 1, 1984 (Repealed)

SUBPART B: SCHEDULE OF RATES

Section	
310.205	Introduction
310.210	Prevailing Rate
310.220	Negotiated Rate
310.230	Part-Time Daily or Hourly Special Services Rate
310.240	Hourly Rate
310.250	Member, Patient and Innate Rate
310.260	Trainee Rate
310.270	Legislated and Contracted Rate
310.280	Designated Rate
310.290	Out-of-State or Foreign Service Rate
310.300	Educator Schedule for RC-063 and HR-010

DEPARTMENT OF CENTRAL MANAGEMENT SERVICE

NOTICE OF ADOPTED AMENDMENTS

310.310	Physician Specialist Rate
310.320	Annual Compensation Ranges for Executive Director and Assistant Executive Director, State Board of Elections
310.330	Excluded Classes Rate (Repealed)

SUBPART C: MERIT COMPENSATION SYSTEM

Section	
310.410	Jurisdiction
310.420	Objectives
310.430	Responsibilities
310.440	Merit Compensation Salary Schedule
310.450	Procedures for Determining Annual Merit Increases
310.455	Intermittent Merit Increase
310.456	Merit Zone
310.460	Other Pay Increases
310.470	Adjustment
310.480	Decreases in Pay
310.490	Other Pay Provisions
310.495	Senior Public Service Administrator System
310.500	Definitions
310.510	Conversion of Base Salary to Pay Period Units
310.520	Conversion of Base Salary to Daily or Hourly Equivalents
310.530	Implementation
310.540	Annual Merit Increase Guidechart for Fiscal Year 1993-1994
310.550	Fiscal Year 1985 Pay Changes in Merit Compensation System, effective July 1, 1984 (Repealed)

APPENDIX A: Negotiated Rates of Pay

Table	
TABLE A	HR-190 (Department of Central Management Services - State of Illinois Building - SEIU)
TABLE B	HR-200 (Department of Labor - Chicago, Illinois - SEIU)
TABLE C	RC-069 (Firefighters, AFSCME)
TABLE D	HR-001 (Teamsters Local #726)
TABLE E	RC-020 (Teamsters Local #330)
TABLE F	RC-019 (Teamsters Local #25)
TABLE G	RC-045 (Automotive Mechanics, IFPE)
TABLE H	RC-006 (Corrections Employees, AFSCME)
TABLE I	RC-009 (Institutional Employees, AFSCME)
TABLE J	RC-014 (Clerical Employees, AFSCME)

DEPARTMENT OF CENTRAL MANAGEMENT SERVICE

NOTICE OF ADOPTED AMENDMENTS

TABLE K	RC-023 (Registered Nurses, INA)
TABLE L	VR-004 (Illinois State Treasurer's Office Employees, Teamsters and IFT)
TABLE M	RC-110 (Conservation Police Lodge)
TABLE N	RC-010 (Professional Legal Unit, AFSCME)
TABLE O	RC-028 (Paraprofessional Human Services Employees, AFSCME)
TABLE P	RC-029 (Paraprofessional Investigatory and Law Enforcement Employees, IFPE)
TABLE Q	RC-033 (Meat Inspectors, IFPE)
TABLE R	RC-042 (Residual Maintenance Workers, AFSCME)
TABLE S	RC-012 (Fair Employment Practices Employees, SEIU)
TABLE T	HR-010 (Teachers of Deaf, IFT)
TABLE U	HR-010 (Teachers of Deaf, Extra-curricular Paid Activities)
TABLE V	CU-500 (Corrections Meet and Confer Employees)
TABLE W	RC-062 (Technical Employees, AFSCME)
TABLE X	RC-063 (Educators, AFSCME)
TABLE Y	RC-063 (Educators, AFSCME)
TABLE Z	RC-063 (Physicians, AFSCME)
APPENDIX B	Schedule of Salary Grades - Monthly and Annual Rates of Pay for Fiscal Year 1994
APPENDIX C	Medical Administrative Rates for Fiscal Year 1993 1994
APPENDIX D	Merit Compensation System Salary Schedule for Fiscal Year 1993 1994
APPENDIX E	Teaching Salary Schedule (Repealed)
APPENDIX F	Physician and Physician Specialist Salary Schedule (Repealed)
APPENDIX G	Senior Public Service Administrator Salary Schedule, effective August 4 16, 1993

AUTHORITY: Implementing and authorized by Section 8a(2) of the Personnel Code (Ill. Rev. Stat. 1991, ch. 127, par. 63b-108a 2) [20 ILCS 415/8a-2].

SOURCE: Filed June 28, 1967, codified at 8 Ill. Reg. 1558, emergency amendment at 8 Ill. Reg. 1990, effective January 31, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 2440, effective February 15, 1984, emergency amendment at 8 Ill. Reg. 3348, effective March 5, 1984, for a maximum of 150 days; emergency amendment at 8 Ill. Reg. 4249, effective March 16, 1984, for a maximum of 150 days; emergency amendment at 8 Ill. Reg. 5704, effective April 16, 1984, for a maximum of 150 days; emergency amendment at 8 Ill. Reg. 7290, effective May 11, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 11299, effective June 25, 1984, emergency amendment at 8 Ill. Reg. 12616, effective July 1, 1984, for a maximum of 150 days; emergency amendment at 8 Ill. Reg. 15007, effective August 6, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 15367, effective August 13, 1984, emergency amendment at 8 Ill. Reg. 21310, effective October 10, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 21544, effective October 24, 1984, amended at 8 Ill. Reg. 22844, effective November 14, 1984; emergency amendment at 9 Ill. Reg. 1134, effective January 16, 1985, for a maximum of 150 days;

DEPARTMENT OF CENTRAL MANAGEMENT SERVICE

NOTICE OF ADOPTED AMENDMENTS

amended at 9 Ill. Reg. 1320, effective January 23, 1985, amended at 9 Ill. Reg. 3681, effective March 12, 1985, emergency amendment at 9 Ill. Reg. 4163, effective March 15, 1985, for a maximum of 150 days; emergency amendment at 9 Ill. Reg. 9231, effective May 31, 1985, for a maximum of 150 days; amended at 9 Ill. Reg. 9420, effective June 7, 1985; amended at 9 Ill. Reg. 10663, effective July 1, 1985, emergency amendment at 9 Ill. Reg. 15043, effective September 24, 1985, for a maximum of 150 days; peremptory amendment at 10 Ill. Reg. 3325, effective January 22, 1986, amended at 10 Ill. Reg. 3230, effective January 24, 1986, emergency amendment at 10 Ill. Reg. 8904, effective May 13, 1986, for a maximum of 150 days; peremptory amendment at 10 Ill. Reg. 8928, effective May 13, 1986; emergency amendment at 10 Ill. Reg. 12090, effective June 30, 1986, for a maximum of 150 days; peremptory amendment at 10 Ill. Reg. 13675, effective July 31, 1986; peremptory amendment at 10 Ill. Reg. 14867, effective August 26, 1986; amended at 10 Ill. Reg. 15567, effective September 17, 1986, emergency amendment at 10 Ill. Reg. 17765, effective September 30, 1986, for a maximum of 150 days; peremptory amendment at 10 Ill. Reg. 19132, effective October 28, 1986, peremptory amendment at 10 Ill. Reg. 21097, effective December 9, 1986, amended at 11 Ill. Reg. 648, effective December 22, 1986, peremptory amendment at 11 Ill. Reg. 3363, effective February 3, 1987, peremptory amendment at 11 Ill. Reg. 4388, effective February 27, 1987, peremptory amendment at 11 Ill. Reg. 6291, effective March 23, 1987, amended at 11 Ill. Reg. 5901, effective March 24, 1987, emergency amendment at 11 Ill. Reg. 8787, effective April 15, 1987, for a maximum of 150 days; emergency amendment at 11 Ill. Reg. 11830, effective July 1, 1987, for a maximum of 150 days; peremptory amendment at 11 Ill. Reg. 13675, effective July 29, 1987, amended at 11 Ill. Reg. 14984, effective August 27, 1987, peremptory amendment at 11 Ill. Reg. 15273, effective September 1, 1987, peremptory amendment at 11 Ill. Reg. 17919, effective October 19, 1987, peremptory amendment at 11 Ill. Reg. 19812, effective November 19, 1987, emergency amendment at 11 Ill. Reg. 20664, effective December 4, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 20778, effective December 11, 1987, peremptory amendment at 12 Ill. Reg. 3811, effective January 27, 1988, peremptory amendment at 12 Ill. Reg. 5459, effective March 3, 1988, amended at 12 Ill. Reg. 6073, effective March 21, 1988, peremptory amendment at 12 Ill. Reg. 7783, effective April 14, 1988, emergency amendment at 12 Ill. Reg. 7734, effective April 15, 1988, for a maximum of 150 days; peremptory amendment at 12 Ill. Reg. 8135, effective April 22, 1988, peremptory amendment at 12 Ill. Reg. 9745, effective May 23, 1988, emergency amendment at 12 Ill. Reg. 11778, effective July 1, 1988, for a maximum of 150 days; emergency amendment at 12 Ill. Reg. 12895, effective July 18, 1988, for a maximum of 150 days; peremptory amendment at 12 Ill. Reg. 13306, effective July 27, 1988, corrected at 12 Ill. Reg. 13359, amended at 12 Ill. Reg. 14630, effective September 6, 1988, amended at 12 Ill. Reg. 20449, effective November 28, 1988, peremptory amendment at 12 Ill. Reg. 20584, effective November 28, 1988, peremptory amendment at 13 Ill. Reg. 8080, effective May 10, 1989, amended at 13 Ill. Reg. 8849, effective May 30, 1989, peremptory amendment at 13 Ill. Reg. 8970, effective May 26, 1989, emergency amendment at 13 Ill. Reg. 10967, effective June 20, 1989, for a maximum of 150 days; emergency amendment expired on November 17, 1989, amended at 13 Ill. Reg. 11451, effective June 28, 1989, emergency amendment at 13 Ill. Reg. 11854, effective July 1, 1989, for a maximum of 150 days; corrected at 13 Ill. Reg. 12647, peremptory amendment at 13 Ill. Reg. 12887, effective July 24, 1989, amended at 13

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF ADOPTED AMENDMENTS

Ill. Reg. 16950, effective October 20, 1989, amended at 13 Ill. Reg. 19221, effective December 12, 1989; amended at 14 Ill. Reg. 615, effective January 2, 1990; peremptory amendment at 14 Ill. Reg. 1627, effective January 11, 1990; amended at 14 Ill. Reg. 4455, effective March 12, 1990; peremptory amendment at 14 Ill. Reg. 7652, effective May 7, 1990; amended at 14 Ill. Reg. 10002, effective June 11, 1990; emergency amendment at 14 Ill. Reg. 11330, effective June 29, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 14361, effective August 24, 1990; emergency amendment at 14 Ill. Reg. 15570, effective September 11, 1990, for a maximum of 150 days; emergency amendment expired on February 8, 1991; corrected at 14 Ill. Reg. 16092, peremptory amendment at 14 Ill. Reg. 17098, effective September 26, 1990, amended at 14 Ill. Reg. 17189, effective October 2, 1990, amended at 14 Ill. Reg. 17189, effective October 19, 1990, amended at 14 Ill. Reg. 18719, effective November 13, 1990; peremptory amendment at 14 Ill. Reg. 18854, effective November 13, 1990; peremptory amendment at 15 Ill. Reg. 663, effective January 7, 1991; amended at 15 Ill. Reg. 3296, effective February 14, 1991; amended at 15 Ill. Reg. 4401, effective March 11, 1991; peremptory amendment at 15 Ill. Reg. 5100, effective March 20, 1991; peremptory amendment at 15 Ill. Reg. 5465, effective April 2, 1991; emergency amendment at 15 Ill. Reg. 10485, effective July 1, 1991, for a maximum of 150 days; amended at 15 Ill. Reg. 11080, effective July 19, 1991; amended at 15 Ill. Reg. 13080, effective August 21, 1991; amended at 15 Ill. Reg. 14210, effective September 23, 1991; emergency amendment at 16 Ill. Reg. 711, effective December 26, 1991, for a maximum of 150 days; amended at 16 Ill. Reg. 3450, effective February 20, 1992; peremptory amendment at 16 Ill. Reg. 5068, effective March 11, 1992; peremptory amendment at 16 Ill. Reg. 7056, effective April 20, 1992; emergency amendment at 16 Ill. Reg. 8239, effective May 19, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 8382, effective May 26, 1992; emergency amendment at 16 Ill. Reg. 13950, effective August 19, 1992, for a maximum of 150 days; emergency amendment at 16 Ill. Reg. 14452, effective September 4, 1992, for a maximum of 150 days; amended by 17 Ill. Reg. 238, effective December 23, 1992; peremptory amendment at 17 Ill. Reg. 498, effective December 18, 1992, amended at 17 Ill. Reg. 590, effective January 4, 1993, amended at 17 Ill. Reg. 1819, effective February 2, 1993; amended at 17 Ill. Reg. 6441, effective April 8, 1993; emergency amendment at 17 Ill. Reg. 12900, effective July 22, 1993, for a maximum of 150 days; amended at 17 Ill. Reg. 13409, effective July 29, 1993; emergency amendment at 17 Ill. Reg. 13789, effective August 9, 1993, for a maximum of 150 days; emergency amendment at 17 Ill. Reg. 14666, effective August 26, 1993, for a maximum of 150 days; amended at 17 Ill. Reg. 19103, effective October 25, 1993; emergency amendment at 17 Ill. Reg. 21858, effective December 1, 1993, for a maximum of 150 days; amended at 18 Ill. Reg. _____, effective January 18, 1994.

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF ADOPTED AMENDMENTS

Section 310.290 Out-of-State or Foreign Service Rate

The rate of pay for employees occupying positions which require payment in accordance with the economic conditions and social legislation of another state or foreign country. An adjustment may be made to the salary of an employee stationed in a foreign country to compensate for a change in the currency exchange rate. The Director of the Department of Central Management Services will, before approving an adjustment, consider the need of the employing agency; the treatment of other similar situations, prevailing practices of other employers, and the equity of the particular circumstances.

<u>Title</u>	<u>Range</u>	<u>Effective Fiscal Year 1993</u>	<u>1994</u>
Foreign Service Economic Development Executive I	2730-4743		
	3069 - 5220		
Foreign Service Economic Development Executive II	3552-6238		
	3930 - 6972		
Foreign Service Economic Development Representative	2330-3045		
	2608 - 4345		
Office Administrator IV (States Other Than California and New Jersey)	1895-2969		
(C.A. NJ)	2050 - 3278		
	2142-3357		
	2318 - 3705		
Office Assistant (Foreign Service)	1638-2022		
	1719 - 2123		
Office Associate (States Other Than California and New Jersey)	1751-2197		
(C.A. NJ)	1839 - 2307		
	1980-2483		
	2079 - 2608		
Office Coordinator (States Other Than California and New Jersey)	1818-2294		
(C.A. NJ)	1909 - 2406		
	2055-2500		
	2158 - 2720		

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF ADOPTED AMENDMENTS

Revenue Audit Supervisor
(States Other Than California and New Jersey)
(CA, NJ)
3447 - 5497
3241 - 5556
3523 - 6214
3663 - 6280

Revenue Auditor I
(States Other Than California and New Jersey)
(CA, NJ)
2477 - 3240
2601 - 3402
2804 - 3664
2941 - 3845

Revenue Auditor II
(States Other Than California and New Jersey)
(CA, NJ)
2739 - 3603
2876 - 3784
3097 - 4073
3251 - 4277

Revenue Auditor III
(States Other Than California and New Jersey)
(CA, NJ)
3051 - 4050
3204 - 4253
3449 - 4579
3622 - 4807

Revenue Auditor Trainee
(States Other Than California and New Jersey)
(CA, NJ)
2064 - 2642
2168 - 2774
2334 - 2986
2451 - 3136

Revenue Assistant Audit Field Manager
(States Other Than California and New Jersey)
(CA, NJ)
3309 - 5881
3741 - 6648

Revenue Field Audit Manager
(NJ)
3093 - 7112

Senior Public Service Administrator
(States Other Than California and New Jersey)
(CA, NJ)
3787 - 8390
4281 - 9485

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF ADOPTED AMENDMENTS

Tax Examiner
(States Other Than California and New Jersey)
(CA, NJ)
4848 - 2294
1909 - 2406
2055 - 2590
2158 - 2720

Tax Examiner Trainee
(States Other Than California and New Jersey)
(CA, NJ)
4638 - 2022
1719 - 2123
4851 - 2285
1944 - 2400

(Source: Amended at 18 Ill. Reg. _____, effective January 18, 1994.)

Section 310.450 Procedures for Determining Annual Merit Increases

- a) An annual merit increase is an in-range salary adjustment for demonstrated performance
- b) Eligibility for an annual merit increase shall be determined by the following conditions
 - 1) Each employee will be eligible for a merit review after attaining 12 months creditable service. The employee's immediate supervisor shall prepare an Individual Development and Performance Evaluation form prior to the Performance Review Date, and discuss the results with the employee.
 - 2) Should the Individual Development and Performance review result in the employee not being eligible for an annual merit increase due to provisions of Subsection 310.450(d), or should the employee's base rate be at the maximum rate of pay of the salary range assigned to the employee's position, the employee will not be eligible for an annual merit increase until 12 months of additional creditable service has been accrued.
 - c) Based upon the results of the Individual Development and Performance Evaluation, the employees' immediate supervisor shall determine whether the employee's performance warrants or does not warrant an annual merit increase.
 - d) The amount of an annual merit increase recommendation shall be determined by use of the Merit Increase Guidechart of Section 310.540 if the employee's Individual Development and Performance Evaluation has on the Performance Review Date been evaluated at a Category 3 or higher level. An employee whose Individual Development and

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF ADOPTED AMENDMENTS

Performance Evaluation has, on the Performance Review Date been evaluated at Category 4 or 5 shall not receive an increase in the present base salary. However, in no event is the resulting salary to be lower than the minimum or higher than the maximum rate of pay of the respective salary range assigned to the employee's position.

- c) The employee's immediate supervisor shall prepare a Performance Certification and Salary Increase Recommendation form indicating whether or not the employee is eligible for an annual merit increase and the amount thereof.
- f) The employee's immediate supervisor shall forward the Individual Development and Performance Evaluation records and Performance Certification and Salary Increase Recommendation records to the agency head or a designated authority for review and approval.
- g) Annual merit increases in pay shall become effective the first day of the month in which the employee's Performance Review Date occurs.

(Source: Amended at 18 Ill. Reg. _____, effective January 18, 1994 _____)

Section 310.455 Intermittent Merit Increase

Until further amendment, Intermittent Merit Increases are suspended for Fiscal Year 1993.

- a) An Intermittent Merit Increase may be proposed by a supervisor when one of the following conditions have been met: Outstanding performance of a substantial project, outstanding performance by a manager or supervisor that greatly improves operating efficiency, performance significantly beyond standards for a sustained period. The supervisor must document the circumstances justifying the merit increase.
- b) An Intermittent Merit Increase may be awarded in any whole dollar amount up to 5% of current base salary. An Intermittent Merit Increase may be awarded to an employee not more often than once in a six month period.
- c) The increase must have the prior approval of the agency Director and the Director of Central Management Services.

(Source: Amended at 18 Ill. Reg. _____, effective January 18, 1994 _____)

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF ADOPTED AMENDMENTS

Section 310.530 Implementation

- a) The salary schedule for the Merit Compensation System for Fiscal Year 1993 1994 is as set forth in Appendix D of the Pay Plan
- b) The Merit Increase Guidechart for Fiscal Year 1993 1994 is as set forth in Section 310.540 of the Pay Plan
- c) Any employee with a performance review date of July 1, or August 1 or September 1, 1992 who received a salary payment that did not reflect the use of the Merit Guidechart as set forth in Section 310.540 shall receive a lump sum payment equal to the difference between what was initially paid and what is determined to be appropriate by use of the Merit Increase Guidechart will have his or her salary increase determined by the use of the Merit Compensation Guidechart for Fiscal Year 1994. The increase will be dated August 16, 1993, and a lump sum will be provided as if this resultant salary were effective on the original performance review date. The creditable service date will be adjusted to return to the regular anniversary month.

(Source: Amended at 18 Ill. Reg. _____, effective January 18, 1994 _____)

Section 310.540 Annual Merit Increase Guidechart for Fiscal Year 1993 1994

Category	Definition	Allowable Increase
Category 1	Superior	0% to 8% 2% to 4% to 6%
Category 2	Exceeds Expectations	0% to 5% 2% to 3% to 4%
Category 3	Meets Expectations	0% to 4% 2% to 0% to 3%
Category 4	Needs Improvement	0% 2%
Category 5	Unacceptable	0%

(Source: Amended at 18 Ill. Reg. _____, effective January 18, 1994 _____)

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF ADOPTED AMENDMENTS

Section 310. Appendix C - Medical Administrator Rates for Fiscal Year 1993 1994

Title	Minimum Salary	Midpoint Salary	Maximum Salary
Medical Administrator I	6,204	7,458	8,712
Option C	74,448	89,496	104,544
Medical Administrator I	6,928	8,214	9,500
Option D	83,136	98,568	114,000
Medical Administrator II	6,704	7,978	9,252
Option C	80,448	95,736	111,024
Medical Administrator II	7,600	9,023	10,347
Option D	92,388	108,276	124,164
Medical Administrator III	7,971	9,426	10,881
	95,652	113,112	130,572
Medical Administrator IV	8,101	9,555	11,009
	97,212	114,660	132,108
Medical Administrator V	8,231	9,685	11,139
	98,772	116,220	133,668
Medical Administrator I	6,452	7,713	8,974
Option C	77,424	92,556	107,688
Medical Administrator I	7,205	8,495	9,785
Option D	86,460	101,940	117,420
Medical Administrator II	6,972	8,251	9,530
Option C	83,664	99,012	114,360
Medical Administrator II	8,007	9,332	10,657
Option D	96,084	111,984	127,884
Medical Administrator III	8,290	9,749	11,208
	99,480	116,988	134,496

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF ADOPTED AMENDMENTS

Medical Administrator IV 8,425 9,882 11,339
101,100 118,584 136,068

Medical Administrator V 8,560 10,017 11,474
102,720 120,204 137,688

The rates of pay for physicians occupying or appointed to a position in the Medical Administrator classes shall be as listed in the above schedule. All provisions of Subpart C of the Pay Plan, Merit Compensation System will apply to the Medical Administrator positions

(Source: Amended at 18 Ill. Reg. _____, effective January 18, 1994)

Section 310. Appendix D - Merit Compensation System Salary Schedule for Fiscal Year 1993 1994

Salary Range	Minimum Salary	Midpoint Salary	Maximum Salary	Merit Pay Zone Limit
MC-1	1,643	2,094	2,545	2,671
	19,716	25,128	30,540	32,052
MC-2	1,714	2,200	2,686	2,819
	20,568	26,400	32,232	33,828
MC-3	1,796	2,327	2,858	2,999
	21,552	27,924	34,296	35,988
MC-4	1,878	2,435	2,992	3,141
	22,536	29,220	35,904	37,692
MC-5	1,971	2,576	3,181	3,340
	23,652	30,912	38,172	40,080
MC-6	2,070	2,707	3,344	3,510
	24,840	32,484	40,128	42,120
MC-7	2,181	2,871	3,561	3,738
	26,172	34,452	42,732	44,856

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF ADOPTED AMENDMENTS

Performance Evaluation has on the Performance Review Date been evaluated at Category 4 or 5 shall not receive an increase in the present base salary. However, in no event is the resulting salary to be lower than the minimum or higher than the maximum rate of pay of the respective salary range assigned to the employee's position.

- c) The employee's immediate supervisor shall prepare a Performance Certification and Salary Increase Recommendation form indicating whether or not the employee is eligible for an annual merit increase and the amount thereof.
- f) The employee's immediate supervisor shall forward the Individual Development and Performance Evaluation records and Performance Certification and Salary Increase Recommendation records to the agency head or a designated authority for review and approval.
- g) Annual merit increases in pay shall become effective the first day of the month in which the employee's Performance Review Date occurs.

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Until further amendment, Intermittent Merit Increases are suspended for Fiscal Year 1993.

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- b) An Intermittent Merit Increase may be awarded in any whole dollar amount up to 5% of current base salary. An Intermittent Merit Increase may be awarded to an employee not more often than once in a six month period.
- c) The increase must have the prior approval of the agency Director and the Director of Central Management Services.

(Source: Amended at 18 Ill. Reg. _____, effective January 18, 1994.)

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF ADOPTED AMENDMENTS

Section 310.530 Implementation

- a) The salary schedule for the Merit Compensation System for Fiscal Year 1993 1994 is as set forth in Appendix D of the Pay Plan.
- b) The Merit Increase Guidechart for Fiscal Year 1993 1994 is as set forth in Section 310.540 of the Pay Plan.
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(Source: Amended at 18 Ill. Reg. _____, effective January 18, 1994.)

Section 310.540 Annual Merit Increase Guidechart for Fiscal Year 1993 1994

Category	Definition	Allowable Increase
Category 1	Superior	$0^{00} + 4.8\%$ $2^{00} + 4.5\%$ to 6.5%
Category 2	Exceeds Expectations	$0^{00} + 4.5\%$ $2^{00} + 3^{00}$ to 4.5%
Category 3	Meets Expectations	$0^{00} + 4.5\%$ $2^{00} + 0^{00}$ to 3^{00}
Category 4	Needs Improvement	0^{00} 2^{00}
Category 5	Unacceptable	0^{00}

(Source: Amended at 18 Ill. Reg. _____, effective January 18, 1994.)

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF ADOPTED AMENDMENTS

Section 310. Appendix C - Medical Administrator Rates for Fiscal Year 1993 1994

Title	Minimum Salary	Midpoint Salary	Maximum Salary
Medical Administrator I	6,204	7,458	8,712
Option C	74,448	89,496	104,544
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Medical Administrator II	7,699	9,023	10,347
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	95,652	113,112	130,572
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Medical Administrator II	8,007	9,332	10,657
Option D	96,084	111,984	127,884
Medical Administrator III	8,290	9,749	11,208
	99,480	116,988	134,496

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF ADOPTED AMENDMENTS

Medical Administrator IV	8,425	9,882	11,339
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	102,720	120,204	137,688

The rates of pay for physicians occupying or appointed to a position in the Medical Administrator classes shall be as listed in the above schedule. All provisions of Subpart C of the Pay Plan, Merit Compensation System will apply to the Medical Administrator positions.

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MC 2	1,714	2,200	2,686	2,819
	20,568	26,400	32,232	33,828
MC 3	1,796	2,327	2,858	2,999
	21,552	27,924	34,296	35,988
MC 4	1,878	2,435	2,992	3,141
	22,536	29,220	35,904	37,692
MC 5	1,971	2,576	3,181	3,340
	23,452	30,912	38,172	40,080
MC 6	2,070	2,707	3,344	3,510
	24,840	32,484	40,128	42,120
MC 7	2,181	2,871	3,561	3,738
	26,172	34,452	42,732	44,856

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF ADOPTED AMENDMENTS

MC 8	2,298	3,044	3,790	3,979
	27,576	36,528	45,480	47,748
MC 9	2,429	3,213	3,997	4,195
	29,148	38,556	47,964	50,340
MC 10	2,566	3,422	4,278	4,492
	30,792	41,064	51,336	53,904
MC 11	2,710	3,631	4,552	4,779
	32,520	43,572	54,624	57,348
MC 12	2,878	3,874	4,870	5,114
	34,536	46,488	58,440	61,368
MC 13	3,072	4,141	5,210	5,471
	36,864	49,692	62,520	65,652
MC 14	3,286	4,446	5,606	5,886
	39,432	53,352	67,272	70,632
MC 15	3,528	4,767	6,006	6,306
	42,336	57,204	72,072	75,672
MC 16	3,776	5,121	6,466	6,789
	45,312	61,452	77,592	81,468
MC 17	4,075	5,528	6,981	7,340
	48,900	66,336	83,772	87,960
MC 18	4,392	5,775	7,158	7,516
	52,704	69,300	85,896	90,192
MC 19	4,744	6,034	7,324	7,690
	56,928	72,408	87,888	92,380
MC 1	1,709	2,165	2,621	2,752
	20,508	25,980	31,452	33,024

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF ADOPTED AMENDMENTS

MC 2	1,783	2,275	2,767	2,905
	21,396	27,300	33,204	34,860
MC 3	1,868	2,406	2,944	3,091
	22,416	28,872	35,328	37,092
MC 4	1,953	2,518	3,083	3,237
	23,436	30,216	36,996	38,844
MC 5	2,050	2,663	3,276	3,440
	24,600	31,956	39,312	41,280
MC 6	2,153	2,799	3,445	3,617
	25,836	33,588	41,340	43,404
MC 7	2,268	2,968	3,668	3,851
	27,216	35,616	44,016	46,212
MC 8	2,390	3,147	3,904	4,099
	28,680	37,764	46,848	49,188
MC 9	2,526	3,322	4,118	4,324
	30,312	39,864	49,416	51,888
MC 10	2,669	3,538	4,407	4,627
	32,028	42,456	52,884	55,524
MC 11	2,818	3,754	4,690	4,925
	33,816	45,048	56,280	59,100
MC 12	2,993	4,005	5,017	5,268
	35,916	48,060	60,204	63,216
MC 13	3,195	4,281	5,367	5,635
	38,340	51,372	64,404	67,620
MC 14	3,417	4,596	5,775	6,064
	41,004	55,152	69,300	72,768
MC 15	3,669	4,928	6,187	6,496
	44,028	59,136	74,244	77,952

DEPARTMENT OF CONSERVATION

NOTICE OF ADOPTED AMENDMENTS

1) HEADING OF THE PART: Camping on Department of Conservation Properties

2) CODE CITATION: 17 Ill. Adm. Code 130

3) SECTION NUMBERS: ADOPTED ACTION:

130.50 Amendments
130.70 Amendments
130.100 Amendments

4) STATUTORY AUTHORITY: Implementing and authorized by Sections 1, 4(1), and 4(5) of the State Parks Act (Ill. Rev. Stat. 1991, ch. 105, pars. 465, 468(1) and 468.5) [20 ILCS 835/1, 4(1) and 4(5)1, and by Sections 63a23 and 63a28 of the Civil Administrative Code of Illinois (Ill. Rev. Stat. 1991, ch. 127, pars. 63a23 and 63a28) [20 ILCS 805/63a23 and 63a28].

5) EFFECTIVE DATE OF AMENDMENTS: January 18, 1994

6) DOES THIS RULEMAKING CONTAIN AN AUTOMATIC REPEAL DATE? No

7) DO THESE AMENDMENTS CONTAIN INCORPORATIONS BY REFERENCE? No

8) DATE FILED IN AGENCY'S PRINCIPAL OFFICE: January 18, 1994

9) NOTICE OF PROPOSAL PUBLISHED IN ILLINOIS REGISTER: October 29, 1993, 17 Ill. Reg. 18721

10) HAS JCAR ISSUED A STATEMENT OF OBJECTIONS TO THESE RULES: No

11) DIFFERENCES BETWEEN PROPOSAL AND FINAL VERSION:

In the Authority Note, the following was added following the first Ill. Rev. Stat. reference: [20 ILCS 835/1, 4(1) and 4(5)]

In the Main Source Note and affected source notes, "17 Ill. Reg." was updated to "18 Ill. Reg."

In Section 130.100(c), the last portion of this subsection, starting with "An Act" was changed to read:

Law Enforcement Disposition of Property Act (Ill. Rev. Stat. 1991, ch. 141, par. 141 et seq.) [765 ILCS 1030] and the Illinois Vehicle Title and Registration Law (Ill. Rev. Stat. 1991, ch. 95 1/2, par. 4-201 et seq.) [765 ILCS 5/Ch. 4, Art. II].

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF ADOPTED AMENDMENTS

MC 16	3,927	5,294	6,661	6,994
	47,124	63,528	79,932	83,928

MC 17	4,238	5,714	7,190	7,550
	50,856	68,568	86,280	90,600

MC 18	4,568	5,971	7,374	7,743
	54,816	71,652	88,488	92,916

MC 19	4,934	6,239	7,544	7,921
	59,208	74,868	90,528	95,052

(Source: Amended at 18 Ill. Reg. _____, effective January 18, 1994.)

Section 310. Appendix G Senior Public Service Administrator Salary Schedule, Effective August 16, 1993

Title	Minimum Salary	Maximum Salary
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Senior Public Service Administrator, Level I	39,520	66,950
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Senior Public Service Administrator, Level II	50,000	87,550
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(Source: Amended at 18 Ill. Reg. _____, effective January 18, 1994.)

DEPARTMENT OF CONSERVATION

NOTICE OF ADOPTED AMENDMENT(S)

TITLE 17: CONSERVATION
CHAPTER 1: DEPARTMENT OF CONSERVATION
SUBCHAPTER a: LANDS AND HISTORIC SITES

PART 130
CAMPING ON DEPARTMENT OF CONSERVATION PROPERTIES

Section	
130.10	Location
130.20	Purpose of Campground
130.30	Classification of Camps by Equipment Used - Definitions
130.40	Definition of a Camp
130.50	Registrations
130.60	Permits, Extensions and Time Limits
130.70	Fees and Charges
130.80	Refunds
130.90	Check-in and Check-out Times
130.100	Unoccupied Camps
130.110	Vehicles per Camp (Refer to 17 Ill. Adm. Code Section 130.30)
130.120	Youth Group (Boy Scouts, Girl Scouts, Explorers, Church groups, etc.)
130.130	Organization Group Camps (charter organizations, ROTC, private clubs or others)
130.135	Campground Host Program
130.140	Use of Campground
130.150	Eviction

AUTHORITY: Implementing and authorized by Sections 4, 4(1), and 4(5) of the State Parks Act (Ill. Rev. Stat. 1991, ch. 125, pars. 465, 468(1) and 468.5) [20 ILCS 835/1, 4(1) and 4(5)], and by Sections 63a23 and 63a28 of the Illinois Administrative Code of Illinois (Ill. Rev. Stat. 1991, ch. 127, pars. 63a23 and 63a28) [20 ILCS 805/63a23 and 63a28].

SOURCE: Adopted at 4 Ill. Reg. 5, p. 110, effective February 1, 1980; emergency amendment at 5 Ill. Reg. 777, effective June 1, 1991 for a maximum of 150 days; codified at 5 Ill. Reg. 623; amended at 6 Ill. Reg. 4568, effective December 3, 1981; amended at 6 Ill. Reg. 1940, effective March 1, 1982; amended at 6 Ill. Reg. 526, effective July 21, 1982; amended at 6 Ill. Reg. 14835, effective November 24, 1982; amended at 7 Ill. Reg. 5870, effective April 22, 1983; amended at 8 Ill. Reg. 5647, effective April 16, 1984; amended at 9 Ill. Reg. 6173, effective April 23, 1985; amended at 9 Ill. Reg. 1534, effective July 16, 1985; amended at 10 Ill. Reg. 9777, effective May 21, 1986; amended at 11 Ill. Reg. 13211, effective July 29, 1986; amended at 11 Ill. Reg. 9506, effective May 15, 1987; amended at 14 Ill. Reg. 12412, effective July 23, 1990; emergency amendment at 16 Ill. Reg. 325, effective May 11, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 1582, effective October 2, 1992; amended at 18 Ill. Reg. , effective January 18, 1994.

Section 130.50 Registrations

DEPARTMENT OF CONSERVATION

NOTICE OF ADOPTED AMENDMENTS

- 12) HAVE ALL THE CHANGES AGREED UPON BY THE AGENCY AND JCAR BEEN MADE AS INDICATED IN THE AGREEMENT LETTER ISSUED BY JCAR? Yes
- 13) WILL THESE AMENDMENTS REPLACE AN EMERGENCY RULE (AMENDMENT, REPEALER) CURRENTLY IN EFFECT? NO
- 14) ARE THERE ANY AMENDMENTS PENDING ON THIS PART? No
- 15) SUMMARY AND PURPOSE OF AMENDMENTS: These amendments were proposed to change campground fees charged by the Department.
- 16) INFORMATION AND QUESTIONS REGARDING THESE ADOPTED AMENDMENTS SHALL BE DIRECTED TO:

Jack Price
Department of Conservation
524 S. Second Street, Room 485
Springfield, IL 62701-1787

THE FULL TEXT OF THE ADOPTED AMENDMENTS BEGINS ON THE NEXT PAGE:

DEPARTMENT OF CONSERVATION

NOTICE OF ADOPTED AMENDMENT(S)

- 2) Fall - Winter Camping (September 16 through May 14)
 - A) As long as buildings, water and electrical service are available, regardless of the date, the regular camping fee will apply.
 - B) When cold weather requires closing down buildings and shutting off water in Class A campgrounds, the fee shall be reduced commensurate with the services and facilities available for use.
 - C) The fee for primitive campsites shall be \$6.00 per site. When a change in facilities is made and a campsite is reclassified, the fee for a site will change automatically.

(b) Exceptions: Employees, Concessionaires, and Special Legislation

- 2.) Except for temporary employees of the Department of Conservation who qualify and are placed in the campground host program at approved camping sites, employees of the Department of Conservation or any other state agency, regardless of their official status, will be required to pay the established camping fee.

- 2) The concessionaire, manager, or a responsible employee designated by the concessionaire will not be charged the regular caming fee. Rent will be paid at the rate established by the Department or pursuant to the concession lease.

3) A person 62 years of age or older, who has a Class 2 resident age 52 or older, or a person who has a Class 2 disability as defined in Section 4A of the Illinois Identification Card Act (Ill. Rev. Stat., ch. 124, par. 21A) [5 ILCS 335/4A] or a disabled veteran, or a former prisoner of war as defined in Section 5 of the Department of Veterans Affairs Act (Ill. Rev. Stat., ch. 126 1/2, par. 70) [20 ILCS 2805/5], is entitled to the following camping fee provisions, upon qualifying, which will allow the spouse or minor (under 18) children, or minor grandchildren to be included in the camping party. All other members must be registered and pay the regular camping fee for the facilities provided.

- A) Illinois residents age 62 ~~to-and-including~~ on or after 65 or older will be charged one-half the established camping fee on any Monday, Tuesday, Wednesday or Thursday, at Class A and B sites but must pay the entire established camping fee on all sites on any Friday, Saturday or Sunday, and, if at a site with utilities, must pay the entire utility fee for each day of camping. Verification of age may be made by birth certificate, driver's license holder and passport or other valid document required by law to establish proof of age and date of birth and issued by a federal or state governmental agency. No fee on Class C and D sites Monday through Thursday.

- B) Illinois residents 65-years-of-age-or-older-may-apply-without being who have a Class 2 disability and present a current Illinois Disabled Person Identification Card issued by the

DEPARTMENT OF CONSERVATION

NOTICE OF ADOPTED AMENDMENT(S)

Secretary of State will be charged ~~the~~ ~~camping~~ ~~fee~~ ~~one-half~~ the established camping fee for Class A and B sites on any Monday, Tuesday, Wednesday, or Thursday, but must pay the entire established camping fee for any Friday, Saturday or Sunday, and, if at a site with utilities, must pay the entire utility fee for each day of camping. ~~Where~~ ~~camping~~ ~~fees~~ ~~may~~ ~~be~~ ~~made~~ ~~by~~ ~~other~~ ~~means~~ ~~than~~ ~~the~~ ~~above~~ ~~stated~~ ~~ones~~ ~~the~~ ~~above~~ ~~stated~~ ~~ones~~ ~~shall~~ ~~apply~~ ~~and~~ ~~the~~ ~~above~~ ~~stated~~ ~~ones~~ ~~shall~~ ~~not~~ ~~be~~ ~~used~~ ~~to~~ ~~justify~~ ~~any~~ ~~other~~ ~~charges~~ ~~for~~ ~~camping~~ ~~at~~ ~~the~~ ~~above~~ ~~stated~~ ~~sites~~ ~~and~~ ~~the~~ ~~above~~ ~~stated~~ ~~ones~~ ~~shall~~ ~~not~~ ~~be~~ ~~used~~ ~~to~~ ~~justify~~ ~~any~~ ~~other~~ ~~charges~~ ~~for~~ ~~camping~~ ~~at~~ ~~the~~ ~~above~~ ~~stated~~ ~~sites~~ ~~and~~ ~~the~~ ~~above~~ ~~stated~~ ~~ones~~ ~~shall~~ ~~not~~ ~~be~~ 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An Illinois resident who is a disabled veteran, former prisoner of war, and a Vietnam War veteran may camp without being charged a Veterans Affairs fee if at a site with utilities, just pay the entire utility fee for each day of camping. In addition, anyone wishing to qualify for free camping under the provisions stated above must be able to submit the appropriate document issued by the Illinois Department of Veterans Affairs (Ill. Rev. Stat., ch. 126.1/2, par. (c) 20 ILCS 2805.5).

- [illegible]

(Source: Amended at 18 ill. Reg. - effective January 18, 1994)

Section 130.100 Unoccupied Camps

- a) A camper may leave his camp unoccupied at his own risk for no more than 24 hours during the period between May 15 and September 15. The permit will be revoked for any camp which is continuously vacant for

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- b) longer than 24 hours. No refund will be issued in this case. During the period between September 16 and May 14, a camper may leave his camp unoccupied at his own risk by paying the camping fee and, if at a site with utilities, the utility fee for the entire period covered by the permit, within the limits set by Section 130.60), when notification has been given to the site superintendent.
- c) A camp is deemed to have been abandoned if a camper does not appear to remove his camping equipment within 24 hours of the expiration of his camping permit. When a camp is abandoned, staff will attempt to call the owner at the phone number associated with the license plate number of the camping vehicle. Following this effort, the camp equipment will be inventoried by park staff with an authorized peace officer and it will be removed to a place for safeguarding in the maintenance area for storage. If the owner cannot be located within 30 days, it will be sent to the Law Enforcement Division of the Department for disposal under the rules of abandoned property. ~~When reported to the Department and disposition of the property is determined by the Department, the Law Enforcement Division of Property Act (Ill. Rev. Stat. 1991, ch. 141, par. 141 et seq.) (765 ILCS 1030) and the Illinois Vehicle Title and Registration Law (Ill. Rev. Stat. 1991, ch. 95 1.2, par. 4-201 et seq.) (625 ILCS 5/Ch. 4, Art. 11.~~

(Source: Amended at 18 Ill. Reg. _____, effective January 18, 1994.)

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NOTICE OF ADOPTED AMENDMENTS

- 1) HEADING OF THE PART: Illinois List of Endangered and Threatened Fauna
- 2) CODE CITATION: 17 Ill. Adm. Code 1010
- 3) SECTION NUMBERS: ADOPTED ACTION:
1010.25 Amendments
1010.30 Amendments
- 4) STATUTORY AUTHORITY: Implementing and authorized by Section 7 of the Illinois Endangered Species Protection Act (Ill. Rev. Stat. 1991, ch. 8, par. 337) [520 ILCS 10/7].
- 5) EFFECTIVE DATE OF AMENDMENTS: January 18, 1994
- 6) DOES THIS RULEMAKING CONTAIN AN AUTOMATIC REPEAL DATE? No
- 7) DO THESE AMENDMENTS CONTAIN INCORPORATIONS BY REFERENCE? No
- 8) DATE FILED IN AGENCY'S PRINCIPAL OFFICE: January 18, 1994
- 9) NOTICE OF PROPOSAL PUBLISHED IN ILLINOIS REGISTER: October 8, 1993, 17 Ill. Reg. 16273
- 10) HAS JCAR ISSUED A STATEMENT OF OBJECTIONS TO THESE RULES: No
- 11) DIFFERENCES BETWEEN PROPOSAL AND FINAL VERSION: In the Main Source Note and Section source notes, "17 Ill. Reg." was updated to "18 Ill. Reg."
- 12) HAVE ALL THE CHANGES AGREED UPON BY THE AGENCY AND JCAR BEEN MADE AS INDICATED IN THE AGREEMENT LETTER ISSUED BY JCAR? Yes
- 13) WILL THESE AMENDMENTS REPLACE AN EMERGENCY RULE (AMENDMENT, REPEALER) CURRENTLY IN EFFECT? No
- 14) ARE THERE ANY AMENDMENTS PENDING ON THIS PART? No
- 15) SUMMARY AND PURPOSE OF AMENDMENTS: The Illinois Endangered Species Protection Act requires that the Illinois Endangered Species Protection Board review and revise the Illinois List of Endangered and Threatened Fauna as warranted, but in no case less frequently than every 5 years [520 ILCS 10/6]. The Board recently conducted a thorough review of the list. As required by law [520 ILCS 10/7], the Board conducted a public hearing on July 21, 1993, regarding changes it proposed to make to the Illinois List. Subsequently, at the 82nd meeting of the Illinois Endangered Species Protection Board on August

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20, 1993, the Board adopted such changes to the Illinois List as were supported by scientific evidence.

16) INFORMATION AND QUESTIONS REGARDING THESE ADOPTED AMENDMENTS SHALL BE DIRECTED TO:

Jack Price
Department of Conservation
524 S. Second Street, Room 485
Springfield, IL 62701-1787

THE FULL TEXT OF THE ADOPTED AMENDMENTS BEGINS ON THE NEXT PAGE:

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NOTICE OF ADOPTED AMENDMENT(S)

TITLE 17: CONSERVATION
CHAPTER 1: DEPARTMENT OF CONSERVATION
SUBCHAPTER c: ENDANGERED SPECIES

PART 1010
ILLINOIS LIST OF ENDANGERED AND THREATENED FAUNA

Section
1010.10 Official List
1010.20 Definitions
1010.25 Criteria Used for Listing
1010.30 List

AUTHORITY: Implementing and authorized by Section 2 of the Illinois Endangered Species Protection Act (Ill. Rev. Stat. 1991, ch. 3, par. 107) (20 ILCS 1010.01).

SOURCE: Filed December 21, 1977, effective December 31, 1977; amended at 8 Ill. Reg. 10653; amended at 8 Ill. Reg. 13705, effective July 25, 1984; amended at 13 Ill. Reg. 4179, effective March 17, 1985; amended at 16 Ill. Reg. 501, effective December 30, 1991; amended at 18 Ill. Reg. _____, effective January 18, 1994.

Section 1010.25 Criteria Used for Listing

- a) A species shall be included on the Official List when the following criteria exist:
 - 1) Species included in the Federal List of Endangered or Threatened Species.
 - 2) Species proposed for Federal Endangered or Threatened status which occur in Illinois.
 - 3) Species which formerly were widespread in Illinois but have been nearly extirpated from the State due to habitat destruction, collecting, or other pressures resulting from the development of Illinois.
 - 4) Species which exhibit very restricted geographic ranges in Illinois as a part.
 - 5) Species which exhibit restricted habitats or populations in Illinois.
 - 6) Species which are significant subjects of study, or the species population is far removed from the rest of the species range.
- b) A species shall be removed from the Official List if it no longer satisfies the criteria of the criteria in subsection (a), except that a species that no longer satisfies the criteria because of its restricted habitat in Illinois, the determination shall be made pursuant to Section 2 of the Endangered Species Protection Act (Ill. Rev. Stat. 1991, ch. 3, par. 107) (20 ILCS 1010.01).

(Source: Amended at 18 Ill. Reg. _____, effective _____)

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January 18, 1994

Section 1010.30 List

a) ENDANGERED FISHES OF ILLINOIS

Northern Brook Lamprey
Lake Sturgeon
Pallid Sturgeon
River Chub
Sturgeon Chub
Bigeye Chub
Pallid Shiner
Pumpnose Shiner
Bigeye Shiner
Blacknose Shiner
Bluntnose Shiner
Pallid Shiner
Weed Shiner
Cypress Minnow
Greater Redhorse
Northern Madtom
Western Sand Darter
Eastern Sand Darter
Bluebreast Darter
Western Sand Darter
Towa Darter
Harlequin Darter
Eastern Sand Darter

2) THREATENED FISHES OF ILLINOIS

[illegible]

(-) ENDANGERED SPECIES AND BAPTILES OF ILLINOIS

Heller, J.

Silvery Salamander
Dusky Salamander
Illinois Mud Turtle
Spotted Turtle
River Cooter
Broad-banded Watersnake
Eastern Ribbon Snake
Eastern Watersnake

1) UNBREADED AMPHIBIANS AND REPTILES OF ILLINOIS

Four-toed Salamander
Illinois Garter Frog
Alligator Snapping Turtle
Western Hognose Snake
Coacwnip Snake
Great Plains Rat Snake
Green watersnake
Island's Snake
Timber Rattlesnake

2) ENDANGERED BIRDS OF ILLINOIS

Bald-headed Eagle
Belted Kingfisher
American Bittern
Least Bittern
~~Great Egret~~
Snowy Egret
Little Blue Heron
Black-crowned Night Heron
Osprey
Mississippi Kite
Bald Eagle**
Northern Harrier +Hawk-Hawk*
Sharp-shinned Hawk
Cooper's Hawk
Red-shouldered Hawk
Swainson's Hawk
Peregrine Falcon**
Greater Prairie Chicken
Yellow Rail
Black Rail
~~Prairie-Chicken~~
Sandhill Crane
Piping Plover**
Inland Sandpiper

Belted Kingfisher
Bobolink
Botaurus lentiginosus
Icthyophaga exilis
~~Casparianus albus~~
Egretta tenuis
Egretta caerulea
Nycticorax nycticorax
Pandion haliaetus
Ictinia mississippiensis
Haliaeetus leucocapillus
Circus cyaneus
Accipiter velox
Accipiter cooperii
Buteo lineatus
Buteo swainsoni
Falco peregrinus
Tympanuchus cupido
Colaptes auratus
Lanius ludovicianus
Sturnella magna
Zonotrichia querula
Thalassidroma melodia
Sturnella magna

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Isopod
Dragonflies
Hine's Emerald's Dragonfly
Bog-Skimmer
Leafhoppers
Leafhopper
Butterflies and Moths
Eryngium Stem Borer
Arogo's Skipper
Hoary Elfin
Karner Blue Butterfly**
Swamp Metalmark

Caecidotea spatulata
Somatochlora hineana
Paraphlepsius lupulus
Papaipema eryngii
Atrytone arogoi
Incisalia polio
Lycæides melissa samuelis
Calephelis muticum

j) THREATENED INVERTEBRATE ANIMALS OF ILLINOIS

Mussels
Ebonyshell
Greek-Heardpitter
Sheepnose
Elephant-ear
Spike
Pondhorn
Butterfly mussel
Crustaceans
Bousfield's Amphipod
Dragonflies
Elfin Skimmer
Leafhoppers
Redveined Prairie Leafhopper
Butterflies
Cotweb Skipper
Ottoe Skipper

Fusconalia ebena
Leamigona-compresa
Plethobasus-cyphus
Elliptio crassidens
Elliptio dilatata
Unio-merus-tetralasmus
Ellipsaria lineolata
Cammarus bousfieldi
Nannothemis bella
Alexia rubianura
Hesperia melea
Hesperia ottoe

(Source: Amended at 18 Ill. Reg. _____, effective
January 18, 1994)

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NOTICE OF ADOPTED AMENDMENTS

- 1) HEADING OF THE PART: Illinois List of Endangered and Threatened Flora
- 2) CODE CITATION: 17 Ill. Adm. Code 1050
- 3) SECTION NUMBERS: ADOPTED ACTION:
1050.25 Amendments
1050.30 Amendments
1050.40 Amendments
- 4) STATUTORY AUTHORITY: Implementing and authorized by Section 7 of the Illinois Endangered Species Protection Act (Ill. Rev. Stat. 1991, ch. 8, par. 337) [520 ILCS 10/7].
- 5) EFFECTIVE DATE OF AMENDMENTS: January 18, 1994
- 6) DOES THIS RULEMAKING CONTAIN AN AUTOMATIC REPEAL DATE? No
- 7) DO THESE AMENDMENTS CONTAIN INCORPORATIONS BY REFERENCE? No
- 8) DATE FILED IN AGENCY'S PRINCIPAL OFFICE: January 18, 1994
- 9) NOTICE OF PROPOSAL PUBLISHED IN ILLINOIS REGISTER: November 22, 1993, 17 Ill. Reg. 16285
- 10) HAS JCAR ISSUED A STATEMENT OF OBJECTIONS TO THESE RULES: No
- 11) DIFFERENCES BETWEEN PROPOSAL AND FINAL VERSION: The Main Source Note and Section source notes were updated to "18 Ill. Reg."
- 12) HAVE ALL THE CHANGES AGREED UPON BY THE AGENCY AND JCAR BEEN MADE AS INDICATED IN THE AGREEMENT LETTER ISSUED BY JCAR? Yes
- 13) WILL THESE AMENDMENTS REPLACE AN EMERGENCY RULE (AMENDMENT, REPEALER) CURRENTLY IN EFFECT? No
- 14) ARE THERE ANY AMENDMENTS PENDING ON THIS PART? No
- 15) SUMMARY AND PURPOSE OF AMENDMENTS: The Illinois Endangered Species Protection Act requires that the Illinois Endangered Species Protection Board review and revise the Illinois List of Endangered and Threatened Flora as warranted, but in no case less frequently than every 5 years [520 ILCS 10/6]. The Board recently conducted a thorough review of the list. As required by law [520 ILCS 10/7], the Board conducted a public hearing on July 21, 1993, regarding changes it proposed to

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make to the Illinois List. Subsequently, at the 82nd meeting of the Illinois Endangered Species Protection Board on August 20, 1993, the Board adopted such changes to the Illinois List as were supported by scientific evidence.

- 16) INFORMATION AND QUESTIONS REGARDING THESE ADOPTED AMENDMENTS SHALL BE DIRECTED TO:

Jack Price
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524 S. Second Street, Room 485
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TITLE 17: CONSERVATION
CHAPTER 1: DEPARTMENT OF CONSERVATION
SUBCHAPTER c: ENDANGERED SPECIES

PART 1050
ILLINOIS LIST OF ENDANGERED AND THREATENED FLORA

Section	Official List
1050.10	Definitions
1050.20	Criteria Used For Listing
1050.25	Endangered Flora of Illinois
1050.30	Threatened Flora of Illinois
1050.40	

AUTHORITY: Implementing and authorized by Section 7 of the Illinois Endangered Species Protection Act (Ill. Rev. Stat. 1991, ch. 8, par. 237) (520 ILCS 10/7).

SOURCE: Adopted at 4 Ill. Reg. 22, p. 209, effective May 20, 1980 unless otherwise noted; amended at 5 Ill. Reg. 10293, effective September 30, 1991; codified at 6 Ill. Reg. 2533; amended at 8 Ill. Reg. 12713, effective July 25, 1984; amended at 13 Ill. Reg. 3755, effective March 13, 1989; amended at 14 Ill. Reg. 6123, effective April 17, 1990; amended at 17 Ill. Reg. 10781, effective July 1, 1993; amended at 18 Ill. Reg. _____, effective January 18, 1994.

Section 1050.25 Criteria Used For Listing

- a) A species shall be included on the Official List when one or more of the following criteria exists:
 - 1) Species included in the Federal list of Endangered or Threatened species.
 - 2) Species proposed for Federal Endangered or Threatened status which occur in Illinois.
 - 3) Species which formerly were widespread in Illinois but have been nearly extirpated from the State due to habitat destruction, collecting, or other pressures resulting from the development of Illinois.
 - 4) Species which exhibit very restricted geographic ranges of which Illinois is a part.
 - 5) Species which exhibit restricted habitats or low populations in Illinois.
 - 6) Species which are significant disjuncts in Illinois, i.e., the Illinois population is far removed from the rest of the species' range.
- b) A species will be removed from the Official List if:
 - 1) no longer fulfills one or more of the criteria in subsection a), except for a species that no longer fulfills the criteria because it no longer grows in Illinois. The determination will be made pursuant to Section 7 of the Endangered Species Protection Act (Ill. Rev. Stat. 1991, ch. 8, par. 237).

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ch. 8, par. 337) [520 ILCS 10.7].

(Source: Amended at 13 Ill. Reg. _____, effective January 18, 1994.)

Section 1050.30 Endangered Flora of Illinois

SCIENTIFIC NAME	COMMON NAME
<u>PHYSCIACEAE</u>	
<u>Praopovascia leana</u>	Lea's Bog Lichen
<u>SOUTSETACEAE</u>	
<u>Equisetum pratense</u>	Meadow Horsetail
<u>Equisetum scirpoides</u>	Dwarf Scouring Rush
<u>Equisetum sylvaticum</u>	Horsetail
<u>LYCOPODIACEAE</u>	
<u>Lycopodium clavatum</u>	Running Pine
<u>Lycopodium genoidicum</u>	Ground Pine
<u>Lycopodium inundatum</u>	Bog Clubmoss
<u>ISOETACEAE</u>	
<u>Isoetes butleri</u>	Quillwort
<u>OPHIOGLOSSACEAE</u>	
<u>Botrychium alternatum</u>	Southern Grape Fern
<u>Botrychium matricariaefolium</u>	Daisyleaf Grape Fern
<u>Botrichium multifidum</u>	Northern Grape Fern
<u>Botrychium simplex</u>	Dwarf Grape Fern
<u>POLYPODIACEAE</u>	
<u>Asplenium bradleyi</u>	Bradley's Splenewort
<u>Asplenium resiliens</u>	Black Splenewort
<u>Cystopteris laurentiana</u>	Fragile Fern
<u>Dryopteris celsa</u>	Log Fern
<u>Gymnocarpium dryopteris</u>	Oak Fern
<u>Gymnocarpium robertianum</u>	Scented Oak Fern
<u>Thelypteris noveboracensis</u>	New York Fern
<u>Thelypteris pneopteris</u>	Long Beech Fern
<u>Woodsia ilvensis</u>	Rusty Woodsia
<u>CUPRESSACEAE</u>	
<u>Juniperus horizontalis</u>	Trailing Juniper
<u>PRINACEAE</u>	
<u>Pinus banksiana</u>	Jack Pine
<u>Pinus echinata</u>	Shortleaf Pine
<u>Pinus resinosa</u>	Red Pine
<u>ALISMATACEAE</u>	
<u>Echinodorus tenellus</u>	Small Burhead
<u>Sagittaria longirostris</u>	Arrowhead
<u>ARACEAE</u>	
<u>Calla palustris</u>	Water Arum
<u>BURMANNIACEAE</u>	
<u>Thismia americana</u>	Thismia
<u>COMELINACEAE</u>	

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<u>Tradescantia bracteata</u>	Prairie Spiderwort
<u>CYPERACEAE</u>	
<u>Carex alata</u>	Winged Sedge
<u>Carex arkansana</u>	Sedge
<u>Carex aurea</u>	Golden Sedge
<u>Carex austriaca</u>	Sedge
<u>Carex baileyi</u>	Sedge
<u>Carex brunneus</u>	Brownish Sedge
<u>Carex canescens var. disjuncta</u>	Sedge
<u>Carex chordorrhiza</u>	Cardroot Sedge
<u>Carex communis</u>	Fibrous-rooted Sedge
<u>Carex crawfordii</u>	Sedge
<u>Carex cryptolepis</u>	Sedge
<u>Carex decomposita</u>	Cypress-knee Sedge
<u>Carex disperma</u>	Shortleaf Sedge
<u>Carex echinata</u>	Sedge
<u>Carex garberi</u>	Sedge
<u>Carex gigantea</u>	Large Sedge
<u>Carex heliophila</u>	Sedge
<u>Carex intumescens</u>	Swollen Sedge
<u>Carex laxa</u>	Sedge
<u>Carex lucorum</u>	Sedge
<u>Carex nigromarginata</u>	Black-edged Sedge
<u>Carex oligosperma</u>	Few-seeded Sedge
<u>Carex oxylepis</u>	Sharp-scaled Sedge
<u>Carex pallascens</u>	Pale Sedge
<u>Carex physornyncha</u>	Bellows Beak Sedge
<u>Carex prasina</u>	Drooping Sedge
<u>Carex reniformis</u>	Sedge
<u>Carex rostrata</u>	Sedge
<u>Carex striatula</u>	Lined Sedge
<u>Carex styloflexa</u>	Bent Sedge
<u>Carex tomsa</u>	Shaved Sedge
<u>Carex trisperma</u>	Three-seeded Sedge
<u>Carex tuckermanni</u>	Tuckerman's Sedge
<u>Carex viridula</u>	Little Green Sedge
<u>Carex willdenowii</u>	Willdenow's Sedge
<u>Carex woodii</u>	Pretty Sedge
<u>Cyperus lancastriensis</u>	Galingale
<u>Eleocharis olivacea</u>	Spikerush
<u>Eleocharis pauciflora</u>	Few-flowered Spikerush
<u>Eriophorum virginicum</u>	Rusty Cotton Grass
<u>Eriophorum viridi-carinatum</u>	Tall Cotton Grass
<u>Fimbristylis annua</u>	Baldwin's Fimbristylis
<u>Fimbristylis vanii</u>	Vahl's Fimbristylis
<u>Lipocarpna maculata</u>	Mottled Lipocarpna
<u>Phynchospora globularis</u>	Grass Beak Rush
<u>Rhynchospora glomerata</u>	Clustered Beak Rush
<u>Scirpus cespitosus</u>	Tufted Bulrush

DEPARTMENT OF CONSERVATION

NOTICE OF ADOPTED AMENDMENT(S)

Scirpus nallii
 Scirpus nartorianus
 Scirpus paludosus
 Scirpus purshianus
 Scirpus smithii
 Scirpus toreyi
 Scirpus verecundus
 Scleria reticularis var. munlenbergii
~~POACEAE~~

Sisyrinchium atlanticum
 Sisyrinchium montanum
~~UNCACEAE~~
 Juncus alpinus
 Juncus vaseyi
 Juncus acuminata
~~UNCAGINACEAE~~
 Scheuchzeria palustris
 Triglochin maritima
 Triglochin palustris
~~LILIACEAE~~

Camassia angusta
 Erythronium mesochoreum
 Lillium superbum
 Medeola virginiana
 Stenanthium gramineum
 Trillium cernuum
~~Trillium erectum~~
 Trillium erectum
 Zigadenus glaucus
~~MARANTACEAE~~
 Thalia dealbata

~~ORCHIDACEAE~~
 Calopogon tuberosus
 Cypripedium acaule
 Cypripedium calceolus
 var. parviflorum
 Cypripedium candidum
 Cypripedium reginae
 Habenaria-estata
 Habenaria-estata
 Habenaria-flava-var.-estata
 Habenaria-leucophaea
 Habenaria-psyodes
 Hexaletris spicata
 Isotria medeoloides
 Isotria verticillata
 Platanthera ciliata
 Platanthera clavellata

Bulrush
 Bulrush
 Alkali Bulrush
 Weak Bulrush
 Bulrush
 Bulrush
 Bulrush
 Netted Nut Rush

Eastern Blue-eyed Grass
 Mountain Blue-eyed Grass
 Richardson's Rush
 Vasey's Rush
 Harry Woodrush

Arrow Grass
 Common Bog Arrow Grass
 Slender Bog Arrow Grass

Wild Hyacinth
 White-Bog-tooth-Violet
 Prairie Trout-Lily

Turk's Cap Lily
 Indian Cucumber Root
 Grass-leaved Lily
 Nodding Trillium
 Trillium
 Ill-scented Trillium
 White Camass

Powdery Thalia

Grass Pink Orchid
 Moccasin Flower

Small Yellow Lady's Slipper
 White Lady's Slipper
 Showy Lady's Slipper
 Orange-Fringed-Orchid
 Wood-Orchid

Spotted-Orchid
 Prairie-White-Fringed-Orchid
 Purple-Fringed-Orchid
 Crested Coralroot Orchid
 Small Whorled Pogonia
 Whorled Pogonia
 Orange-Fringed Orchid
 Wood Orchid

DEPARTMENT OF CONSERVATION

NOTICE OF ADOPTED AMENDMENT(S)

Platanthera flava var. flava
 Platanthera flava var. herbicola
 Platanthera leucophaea
 Platanthera psycodes
 Pogonia opnioglossoides
 Spiranthes lucida
 Spiranthes romanzoffiana
 Spiranthes vernalis
~~POACEAE~~

Agropyron subsecundum
 Ammophila breviligulata
 Andropogon ternarius
 Beckmannia syzigachne
 Glyceria arkansana
 Glyceria borealis
 Gymnopogon ambiguus
 Leptochloa panicoides
 Melica mutica
 Milium effusum
 Panicum boreale
 Panicum columbianum
 Panicum joorii

Panicum longifolium
 Panicum ravenelii
 Panicum stipitatum
 Panicum yadkinense
~~Paspalum-buuttii~~
 Paspalum dissectum
 Poa alsodes
 Poa autumnalis
 Poa lanquida
 Poa wolfii

Puccinellia pallida
 Schizachne purpurascens
~~POINTERACEAE~~
 Heteranthera reniformis
~~POTAMOGETONACEAE~~

Potamogeton gramineus
 Potamogeton praelongus
 Potamogeton pulcher
 Potamogeton robbinsii
 Potamogeton strictifolius
 Potamogeton vaseyi
~~SPARGANIACEAE~~

Spartanium americanum
 Spartanium chlorostachyum
~~ACANTHACEAE~~
 Justicia ovata
~~ADOXACEAE~~

Grass-leaved Pondweed
 White-stemmed Pondweed
 Spotted Pondweed
 Fern Pondweed
 Sluff Pondweed
 Vasey's Pondweed

American Burreed
 Green-fruited Bulreed
 Water willow

Tuberclad Orchid
 Tuberclad Orchid
 Prairie White Fringed Orchid
 Purple Fringed Orchid
 Snake-mouth
 Yellow-lipped Ladies' Tresses
 Hooded Ladies' Tresses
 Spring Ladies' Tresses

Bearded Wheat Grass
 Matram Grass
 Silver Broom Sedge
 American Slough Grass
 Manna Grass
 Northern Manna Grass
 Beard Grass
 Salt Meadow Grass
 Two-flowered Melic Grass
 Miller Grass
 Northern Panic Grass
 Hemlock Panic Grass
 Panic Grass
 Long-leaved Panic Grass
 Panic Grass
 Panic Grass
 Panic Grass
 Harry-Seed-Grass
 Bead Grass
 Grove Bluegrass
 Bluegrass
 Weak Bluegrass
 Wolf's Bluegrass
 Grass
 False Melic Grass

Mud Plantain
 Grass-leaved Pondweed
 White-stemmed Pondweed
 Spotted Pondweed
 Fern Pondweed
 Sluff Pondweed
 Vasey's Pondweed

American Burreed
 Green-fruited Bulreed
 Water willow

DEPARTMENT OF CONSERVATION

NOTICE OF ADOPTED AMENDMENT(S)

Adoxa moschatellina Moschatel
 AMARANTHACEAE
 Iresine chinensis Bloodleaf
 APIACEAE
 Conioselinum chinense Hemlock Parsley
 Cynosciadium digitatum Cynosciadium
 Eryngo Eryngo
 Hydrocotyle ranunculoides Water-pennywort
~~Pittmanium-sagittatum~~ ~~Mock-Bishop's-weed~~
 Ptilimnium nuttallii Mock Bishop's Weed
 ASCLEPIADACEAE
 Asclepias lanuginosa Woolly Milkweed
 Asclepias meadii* Mead's Milkweed
 Asclepias ovalifolia Oval Milkweed
 Matelea decipiens Climbing Milkweed
 ASTERACEAE
 Artemisia dracunculoides Dragon Wormwood
 Bidens beckii Water Marigold
 Eupatorium incarnatum Thoroughwort
 Helianthus giganteus Tall Sunflower
 Hymenoxys acaulis var. glabra* Lakeside Daisy
 Lactuca hirsuta Wild Lettuce
 Lactuca ludoviciana Western Wild Lettuce
 Melanthera nivea White Melanthera
 Microseris cuspidata Prairie Dandelion
 Rudbeckia missouriensis Missouri Orange Coneflower
 Silphium pinnatifidum Rosinweed
 Silphium trifoliatum Rosinweed
 Solidago arguta (sensu lato: Goldenrod
 incl. S. strigosa & S. bootii)
 BERBERIDACEAE
 Berberis canadensis Allegheny Barberry
 BETULACEAE
 Alnus rugosa Speckled Alder
 Betula alleghaniensis Yellow Birch
 Betula populifolia Gray Birch
 BORAGINACEAE
 Hackelia americana Stickseed
 Heliotropium tenellum Slender Heliotrope
 BRASSICACEAE
 Cardamine pratensis var. palustris Cuckoo Flower
 Draba cuneifolia Whitlow Grass
 Lesquerella ludoviciana Silvery Bladderpod
 Rorippa islandica subsp. hispida Hairy Marsh Yellow Cress
 CACTACEAE
 Opuntia fragilis Fragile Prickly Pear
 CAPPARIDACEAE
 Polanisia jamesii James' Clammyweed
 CAPRIFOLIACEAE

DEPARTMENT OF CONSERVATION

NOTICE OF ADOPTED AMENDMENT(S)

Lonicera dioica var. glaucescens Red Honeysuckle
 Loniceria flava Yellow Honeysuckle
 Symphoricarpos albus var. albus Snowberry
 Viburnum molle Arrowwood
 CARYOPHYLLACEAE
 Arenaria patula Slender Sandwort
 Silene regia Royal Catchfly
 Stellaria pubera Great Chickweed
 CELASTRACEAE
 Euonymus americanus American Strawberry Bush
 CISTACEAE
 Hudsonia tomentosa False Heather
 Lechea intermedia Pinweed
 CLUSIACEAE
 Hypericum adpressum Shore St. John's Wort
~~Hypericum-densiflorum~~ ~~St.-John's-wort~~
 Hypericum kalmianum Kalm's St. John's Wort
 Triadenum virginicum Marsh St. John's Wort
 CONVOLVUACEAE
 Stylisama pickeringii Patterson Bindweed
 CORNACEAE
 Cornus canadensis Bunchberry
 CORYLACEAE
 Corylus cornuta Beaked Hazelnut
 CUCURBITACEAE
 Melothria pendula Squirling Cucumber
 DROSERACEAE
 Drosera rotundifolia Round-leaved Sundew
 ELAEAGNACEAE
 Shepherdia canadensis Buffaloberry
 ERICACEAE
 Arctostaphylos uva-ursi Bearberry
 Gaultheria procumbens Wintergreen
 Vaccinium corymbosum Highbush Blueberry
 Vaccinium macrocarpon Large Cranberry
 Vaccinium oxycoccos Small Cranberry
~~Vaccinium-stamineum~~ ~~Bearberry~~
 EUPHORBACEAE
 Chamaesyce polygonifolia Seaside Spurge
 Euphorbia spathulata Spurge
 FABACEAE
 Amorpha nitens Smooth False Indigo
 Apios priceana* Price's Groundnut
 Astragalus crassicaarpus Large Ground Plum
 var. trichocalyx Tennessee Milk Vetch
 Astragalus tennesseensis Yellowwood
 Cladrastis lutea Leafy Prairie Clover
 Dalea foliosa** Boykin's Dioclea
 Dioclea multiflora

DEPARTMENT OF CONSERVATION

NOTICE OF ADOPTED AMENDMENT(S)

Lathyrus maritimus
 Lespedeza leptostachya*
 Lespedeza torreyana
 Trifolium reflexum
 FAGACEAE
 Castanea dentata
 Quercus nuttallii
 GENTIANACEAE
 Bartonia paniculata
 Sabatia campestris
 GERANIACEAE
 Geranium dicknellii
 HYDROPHYLLACEAE
 Hydroclea uniflora
 Phacelia gilliioides
 JUNCACEAE
 Carex pallida
 LAMIACEAE
 Pycnanthemum albescens
 Pycnanthemum torrei
 Synandra hispidula
 LENTIBULARIACEAE
 Utricularia cornuta
 Utricularia intermedia
 Utricularia minor
 MALVACEAE
 Iliamna remota
 Sphaeralcea angusta
 MYRICACEAE
 Comptonia peregrina
 NYCTAGINACEAE
 Mirabilis hirsuta
 ONAGRACEAE
 Circaea alpina
 Oenothera perennis
 OROBANCHACEAE
 Orobanche fasciculata
 Orobanche ludoviciana
 OXALIDACEAE
 Oxalis illinoensis
 PAPAVERACEAE
 Corydalis aurea
 Corydalis halei
 Corydalis sempervirens
 PLANTAGINACEAE
 Plantago cordata
 POLEMONIACEAE
 Phlox pilosa subsp. sangamonensis
 POLYCALACEAE

Beach Pea
 Prairie Bush Clover
 Beefy Prairie Clover
 Buffalo Clover
 AMERICAN-CHESNUT
 Nuttall's Oak
 Screwstem
 Prairie Rose Gentian
 Northern Cranesbill
 One-flowered Hydroclea
 Phacelia
 Pale Hickory
 White Mountain Mint
 Mountain Mint
 Hairy Synandra
 Horned Bladderwort
 Flat-leaved Bladderwort
 Small Bladderwort
 Kankakee Mallow
 Globe Mallow
 Sweetfern
 Hairy Umbrella-wort
 Small Enchanter's Nightshade
 Small Sundrops
 Clustered Broomrape
 Broomrape
 Illinois Wood Sorrel
 Golden Corydalis
 Hale's Corydalis
 Pink Corydalis
 Heart-leaved Plantain
 Sangamon Phlox

DEPARTMENT OF CONSERVATION

NOTICE OF ADOPTED AMENDMENT(S)

Polygala incarnata
 POLYGONACEAE
 Polygonum arifolium
 Polygonum careyi
 Rumex hastatulus
 PORTULACACEAE
 Talinum calycinum
 PRIMULACEAE
 Lysimachia fraseri
 Lysimachia radicans
 Primula mistassinica
 PYROLACEAE
 Chimaphila maculata
 Chamaehilla umbellata
 Pyrola americana
 RANUNCULACEAE
 Cimicifuga americana
 Cimicifuga racemosa
 Clematis crispa
 Clematis occidentalis
 Clematis virginiana
 Ranunculus cymbalaria
 RHAMNACEAE
 Berchemia scandens
 Ceanothus ovatus
 Rhamnus alnifolia
 ROSACEAE
 Amelanchier interior
 Amelanchier sanguinea
 Malus angustifolia
 Potentilla millegrana
 Rosa acicularis
 Rubus odoratus
 Rubus setosus
 Sanguisorba canadensis
 Sorbus americana
 Waldsteinia fragarioides
 RUBIACEAE
 Galium virgatum
 SALICACEAE
 Populus balsamifera
 Salix serotima
 Salix syrticola
 SAPHOTACEAE
 Humelia lanuginosa
 SARRACENIACEAE
 Sarracenia purpurea
 SAXIFRAGACEAE
 Pink Milkwort
 Hairbed-leaved Tearthumb
 Carey's Heartsease
 Sour Dock
 Raneflower
 Loosestrife
 Creeping Loosestrife
 Bird's-eye Primrose
 Spotted Wintergreen
 Pipsissewa
 American Bugbane
 False Bugbane
 Blue Jasmine
 Mountain Clematis
 Leatherflower
 Seaside Crowfoot
 Supple-jack
 Redroot
 Alder Buckthorn
 Shadbush
 Shadbush
 Narrow-leaved Crabapple
 Cinquefoil
 Rose
 Arching-Raspberry
 Purple-flowering Raspberry
 Bristly Blackberry
 American Burnet
 American Mountain Ash
 Barren Strawberry
 Dwarf Bedstraw
 Balsam Poplar
 Autumn Willow
 June Willow
 Woolly Buckthorn
 Pitcher Plant

DEPARTMENT OF CONSERVATION

NOTICE OF ADOPTED AMENDMENT(S)

Ribes hirtellum	Northern Gooseberry
Saxifraga virginicensis	Early Saxifrage
SCROPHULARIACEAE	
Castilleja sessiliflora	Downy Yellow Painted Cup
Collinsia violacea	Violet Collinsia
Melampyrum lineare	Cow Wheat
Mimulus glabratus	Yellow Monkey Flower
Penstemon brevisepalus	Short-sepal'd Beard Tongue
Penstemon grandiflorus	Large-flowered Beard Tongue
Veronica americana	American Brooklime
STYRACACEAE	
Halesia carolina	Silverbell Tree
Styrax grandifolia	Bigleaf Snowbell Bush
TILIACEAE	
Tilia heterophylla	White Basswood
ULMACEAE	
Planera aquatica	Water Elm
Ulmus thomasii	Rock Elm
URTICACEAE	
Urtica chamaedryoides	Nettle
VALERIANACEAE	
Valeriana uliginosa	Marsh Valerian
Valerianella chenopodiifolia	Corn Salad
Valerianella umbilicata	Corn Salad
VIOLACEAE	
Viola canadensis	Canada Violet
Viola incognita	Hairy White Violet
Viola primulifolia	Primrose Violet
Viola viarum	Plains Violet

(Source: Amended at 18 Ill. Reg. _____, effective January 18, 1994)

Section 1050.40 Threatened Flora of Illinois

SCIENTIFIC NAME	COMMON NAME
EPHEDRACEAE	
Ephedra distachya	Northern-Grape-Fern
HYMENOPHYLLACEAE	
Trichomanes boschnianum	Filmy Fern
POLYPODIACEAE	
Asplenium platyneuron	Bradley's-Spleenwort
Dennstaedtia punctilobula	Hay-scented Fern
CYPERACEAE	
Juniperus communis	Ground Juniper
Thuja occidentalis	Arbor Vitae
PINACEAE	
Larix laricina	Tamarack
CYPERACEAE	

DEPARTMENT OF CONSERVATION

NOTICE OF ADOPTED AMENDMENT(S)

Carex atherodes	Sedge
Carex crawei	Sedge
Carex laxiculmus	Spreading Sedge
Carex rostrata	Beaked Sedge
Cyperus grayioides	Umbrella Sedge (Galingale)
Eleocharis rostellata	Spike Rush
Rhynchospora alba	Beaked Rush
Scirpus polyphyllus	Bulrush
IRIDACEAE	
Iris-futura	Swamp-Red-iris
LILIACEAE	
Melanthium virginicum	Bunchflower
Polygonatum pubescens	Downy Solomon's Seal
Stenanthium-gramineum	Grass-leaved-bit
Tofieldia glutinosa	False Asphodel
Trillium viride	Green Trillium
Veratrum woodii	False Hellebore
ORCHIDACEAE	
Catepogon-tuberosus	Grass-Pink-Orchid
Corallorhiza maculata	Spotted Coral-root Orchid
Habenaria-flava-var.-heterota	Tubercled-Orchid
POACEAE	
Calamagrostis insperata	Bluejoint Grass
Oryzopsis racemosa	Rice Grass
ARISTOLOCHIACEAE	
Aristolochia serpentaria var. hastata	Virginia Snakeroot
ASCLEPIADACEAE	
Asclepias stenophylla	Narrow-leaved Green Milkweed
Matelea obliqua	Climbing Milkweed
ASTERACEAE	
Artemisia-dracunculifolia	False-Tarragon
Aster furcatus	Forked Aster
Aster scaber	Schreber's Aster
Aster undulatus	Aster
Boltonia decurrens*	Decurrent False Aster
Cirsium-carolinianum	Carolina-Thistle
Cirsium hillii	Hill's Thistle
Cirsium pitcheri*	Pitcher's (Dune) Thistle
Helianthus angustifolius	Narrow-leaved Sunflower
Liatris scariosa var. nieuwlandii	Blazing Star
Solidago sciaphila	Cliff Goldenrod
BRASSICACEAE	
Cakile edentula	Sea Rocket
CAPRIFOLIACEAE	
Bontecore-flava	Yellow-Honeysuckle
Sambucus pubens	Red-berried Elder
CARYOPHYLLACEAE	
Arenaria-patula	Slender-Sandwort
EBENACEAE	

DEPARTMENT OF CONSERVATION

NOTICE OF ADOPTED AMENDMENT(S)

<u>Buonymus-americanus</u>	<u>Strawberry-Bush</u>
<u>CONVOLVULACEAE</u>	<u>Patterson-Bindweed</u>
<u>Styisima-pickeringii</u>	<u>Narrow-leaved Sundew</u>
<u>DROSERACEAE</u>	<u>Leatherleaf</u>
<u>ERICACEAE</u>	<u>Large-seeded Mercury</u>
<u>Chamaedaphne calyculata</u>	<u>Pale Vetchling</u>
<u>EUPHORBACEAE</u>	<u>Willow Oak</u>
<u>Acalypha deamii</u>	<u>Rock Chestnut Oak</u>
<u>FABACEAE</u>	<u>Blue Sage</u>
<u>Lathyrus ochroleucus</u>	<u>Downy Willow Herb</u>
<u>FAGACEAE</u>	<u>Corydalis</u>
<u>Quercus phellos</u>	<u>Star-flower</u>
<u>Quercus prinus</u>	<u>Black Cohosh</u>
<u>LAMIACEAE</u>	<u>Prairie Buttercup</u>
<u>Salvia azurea subsp. pitcheri</u>	<u>Queen-of-the-Prairie</u>
<u>ONAGRACEAE</u>	<u>Dwarf Raspberry</u>
<u>Epilobium strictum</u>	<u>Bog Bedstraw</u>
<u>PAPAVERACEAE</u>	<u>Sullivantia</u>
<u>Corydalis curvisiliqua</u>	<u>Pale False Foxglove</u>
<u>var. grandibracteata</u>	<u>Kittentails</u>
<u>PRIMULACEAE</u>	<u>Ear-leaved Foxglove</u>
<u>Trientalis borealis</u>	<u>Marsh Speedwell</u>
<u>RANUNCULACEAE</u>	<u>Storax</u>
<u>Cimicifuga rubifolia</u>	<u>Nettle</u>
<u>Ranunculus rhomboideus</u>	<u>Dog Violet</u>
<u>ROSACEAE</u>	
<u>Philipendula rubra</u>	
<u>Rubus pubescens</u>	
<u>RUBIACEAE</u>	
<u>Galium labradoricum</u>	
<u>SAXIFRAGACEAE</u>	
<u>Sullivantia renifolia</u>	
<u>SCROPHULARIACEAE</u>	
<u>Agalinus skinneriana</u>	
<u>Besseyia bullii</u>	
<u>Tomanthera auriculata</u>	
<u>Veronica scutellata</u>	
<u>STYRACACEAE</u>	
<u>Styrax americana</u>	
<u>URTICACEAE</u>	
<u>Urtica chamaedryoides</u>	
<u>VIOLACEAE</u>	
<u>Viola conspersa</u>	

(Source: Amended at 18 Ill. Reg. _____, effective January 18, 1994.)

DEPARTMENT OF CONSERVATION

NOTICE OF ADOPTED AMENDMENTS

- 1) HEADING OF THE PART: The Taking of Wild Turkeys - Spring Season
- 2) CODE CITATION: 17 Ill. Adm. Code 710
- 3) SECTION NUMBERS: 710.5 New Section
710.10 Amendments
710.20 Amendments
710.21 Renumbered
710.22 Amendments
710.25 Renumbered, Amendments
710.30 Amendments
710.50 Amendments
710.60 Amendments
- 4) STATUTORY AUTHORITY: Implementing and authorized by Sections 1.3, 1.4, 1.20, 2.9, 2.10 and 2.11 of the Wildlife Code (Ill. Rev. Stat. 1991, ch. 61, pars. 1.3, 1.4, 1.20, 2.9, 2.10 and 2.11) [520 ILCS 5/1.3, 1.4, 1.20, 2.9, 2.10 and 2.11].
- 5) EFFECTIVE DATE OF AMENDMENTS: January 18, 1994
- 6) DOES THIS RULEMAKING CONTAIN AN AUTOMATIC REPEAL DATE? No
- 7) DO THESE AMENDMENTS CONTAIN INCORPORATIONS BY REFERENCE? No
- 8) DATE FILED IN AGENCY'S PRINCIPAL OFFICE: January 18, 1994
- 9) NOTICE OF PROPOSAL PUBLISHED IN ILLINOIS REGISTER: November 5, 1993, 17 Ill. Reg. 18927
- 10) HAS JCAR ISSUED A STATEMENT OF OBJECTIONS TO THESE RULES: No
- 11) DIFFERENCES BETWEEN PROPOSAL AND FINAL VERSION:
The Authority Note was updated.
In the Main Source Note and Section Source Notes, references to "17 Ill. Reg." were updated to "18 Ill. Reg."
In Section 710.5(b), "State" was capitalized.
The following was added for Section 710.21
Section 710.21 Turkey Permit Requirements - Special Hunts (Renumbered)

DEPARTMENT OF CONSERVATION

NOTICE OF ADOPTED AMENDMENTS

(Source: Renumbered to Section 710.25 at 18 Ill. Reg. _____, effective _____)

In Section 710.22(g), "county desk" was changed to "County Clerk".

In Section 710.22(i) in the second to last sentence of this subsection, "is" was changed to "as".

In Section 710.25(b), in the second sentence, "sent" was changed to "send".

The source note for Section 710.25 was changed to read "(Source: Renumbered from Section 710.21 and amended at 18 Ill. Reg. _____, effective _____)."

In Section 710.50(d), "of the three seasons" was changed to "season".

12) HAVE ALL THE CHANGES AGREED UPON BY THE AGENCY AND JCAR BEEN MADE AS INDICATED IN THE AGREEMENT LETTER ISSUED BY JCAR? Yes

13) WILL THESE AMENDMENTS REPLACE AN EMERGENCY RULE (AMENDMENT, REPEALER) CURRENTLY IN EFFECT? No

14) ARE THERE ANY AMENDMENTS PENDING ON THIS PART? No

15) SUMMARY AND PURPOSE OF AMENDMENTS: These amendments have been proposed to update season dates for the 1994 season, open 5 new counties to hunting and divide the State into two hunting zones.

16) INFORMATION AND QUESTIONS REGARDING THESE ADOPTED AMENDMENTS SHALL BE DIRECTED TO:

Jack Price
Department of Conservation
524 S. Second Street, Room 485
Springfield, IL 62701-1787

THE FULL TEXT OF THE ADOPTED AMENDMENTS BEGINS ON THE NEXT PAGE.

DEPARTMENT OF CONSERVATION

NOTICE OF ADOPTED AMENDMENT(S)

TITLE 17: CONSERVATION

CHAPTER I: DEPARTMENT OF CONSERVATION

SUBCHAPTER b: FISH AND WILDLIFE

PART 710

THE TAKING OF WILD TURKEYS - SPRING SEASON

Section	Hunting Zones
710.5	Hunting Seasons
710.10	Statewide Turkey Permit Requirements
710.20	Turkey Permit Requirements - Special Hunts (Renumbered)
710.21	Turkey Permit Requirements - Landowner/Tenant Permits
710.22	Turkey Permit Requirements - Special Hunts
710.25	Turkey Hunting Regulations
710.30	Other Regulations (Repealed)
710.40	Regulations at Various Department Owned or Managed Sites
710.50	Releasing or Stocking of Turkeys
710.60	

AUTHORITY: Implementing and authorized by Sections 1.3, 1.4, 1.20, 2.9, 2.10 and 2.11 of the Wildlife Code (Ill. Rev. Stat. 1991, ch. 61, pars. 1.3, 1.4, 1.20, 2.9, 2.10 and 2.11) [520 ILCS 5/1.3, 1.4, 1.20, 2.9, 2.10 and 2.11].

SOURCE: Adopted at 4 Ill. Reg. 15, p. 153, effective April 1, 1980; codified at 5 Ill. Reg. 10643; amended at 6 Ill. Reg. 3852, effective March 31, 1982; amended at 7 Ill. Reg. 4208, effective March 25, 1983; amended at 8 Ill. Reg. 5663, effective April 16, 1984; amended at 9 Ill. Reg. 6200, effective April 24, 1985; amended at 10 Ill. Reg. 6848, effective April 4, 1986; amended at 11 Ill. Reg. 2267, effective January 20, 1987; amended at 12 Ill. Reg. 5342, effective March 8, 1988; amended at 13 Ill. Reg. 5090, effective April 4, 1989; amended at 14 Ill. Reg. 663, effective January 2, 1990; amended at 15 Ill. Reg. 4161, effective March 4, 1991; amended at 16 Ill. Reg. 1843, effective January 17, 1992; amended at 17 Ill. Reg. 3184, effective March 2, 1993; amended at 18 Ill. Reg. _____, effective January 18, 1994.

Section 710.5 Hunting Zones

- a) The Northern Zone includes that portion of Illinois north of Crawford, Jasper, Effingham, Fayette, Bond, and Madison counties.
- b) The Southern Zone includes the remainder of the State.

(Source: Added at 18 Ill. Reg. _____, effective January 18, 1994)

Section 710.10 Hunting Seasons

- a) Northern Zone Season Dates: Monday, April 21 - Friday, April 26, 1994.
- 1st Season: Monday, April 21 - Friday, April 26, 1994.

DEPARTMENT OF CONSERVATION

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- 2nd Season: Saturday, April 17, 1994 - Thursday, April 22, 1994
- 3rd Season: Friday, April 23, 1994 - Friday, April 29, 1994
- 4th Season: Saturday, May 1, 1994 - Wednesday, May 4, 1994
- Southern Zone Season Dates:
- 1st Season: Monday, April 4, - Friday, April 8, 1994
- 2nd Season: Saturday, April 9 - Thursday, April 14, 1994
- 3rd Season: Friday, April 15 - Friday, April 22, 1994
- 4th Season: Saturday, April 23 - Wednesday, May 4, 1994

c) Open Counties:

Adams
Alexander
Bond (west of State Highway 127 only)
Brown
Bureau
Calhoun
Carroll
Cass
Clark
Clay
Cumberland
Effingham
Fayette
Fulton
Gallatin-Hardin
Greene
Hancock
Henderson
Jackson
Jersey
Jo Daviess
Johnson
Knox
Lee
Macoupin
Marion
Marshall-Putnam
Masson
Morgan
McDonough
Mercer
Monroe
Ogle
Pike

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- Pope
Randolph
Rock Island
Satine
Schuyler
Scott
Stephenson
Tazewell
Union
Washington
Whiteside
Williamson
Winnebago
SOUTHERN ZONE
Alexander
Clay
Effingham
Fayette
Gallatin-Hardin
Jackson
Johnson
Marion
Monroe
Pope
Randolph
Saline
St. Clair
Union
Washington
Williamson

(Source: Amended at 18 Ill. Reg. _____, effective January 18, 1994)

Section 710.20 Statewide Turkey Permit Requirements

- a) To take, or attempt to take, a wild turkey, Illinois residents must first obtain a "Wild Turkey Hunting Permit" from the Department of Conservation for a fee of \$15.00. Non-resident turkey hunters shall be charged the same fee for wild turkey hunting permits as that charged residents of Illinois by the state in which the applicant resides except that in no case shall the fee be less than \$30.00 if the state in which the applicant resides does not provide for turkey hunting by Illinois residents, then the fee shall be \$35.00. Non-residents are also required to obtain a Non-Resident Hunting license before hunting wild turkeys \$75.00 for the first wild turkey hunting permit, and \$25.00 for each additional permit. Residents, except those exempted by Section 3.1 of the Wildlife Code (Ill. Rev. Stat. 1989, ch. 61, par. 3.1) [520 ILCS 5/3.1] are also required to

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obtain a hunting license before hunting wild turkey. Permits are issued for a specific county or area and are valid only in the county or area designated on the permit. Applications for wild turkey permits must be mailed to:

Department of Conservation - Turkey
521 S. Second Street, Room 210
P.O. Box 19446

Springfield, Illinois 62794-9446

b) Applicants must complete all portions of the permit application form. Incomplete applications will be rejected and fees returned. Each applicant must submit a personal check or money order for his/her individual application. Not more than 4 applications may be submitted for group hunters. Applicants submitting applications within three weeks of the season will not be guaranteed receipt of permit by start of season.

c) Applications from Illinois residents will be accepted January 4 3 through January 14. Applications received in the permit office after close of business on January 15 14, except for those postmarked before January 16 15, will be returned and will not be included in the computerized drawing. All requests must be on an official application form. Permits are not transferable and refunds will not be granted. Permits will be allocated in a computerized drawing to be held in Springfield in which the first choice of seasons will be allocated before the second or third choices are considered.

d) Permits not issued during the computerized drawing will be available in a random daily drawing. Starting dates of the random daily drawing will be publicly announced. All hunters not receiving a permit in the computerized drawing and non-residents may apply at this time for the available permits.

e) Any permits not issued as of the second Monday in March will also be available in a random daily drawing to those hunters who have previously received one permit.

f) Landowners or tenants of 40 acres or more land and members of their immediate family may apply for a one-free-turkey-permit for their property only in counties open for turkey hunting. A tenant for the purpose of this Part is one who rents 40 acres or more land for commercial agricultural purposes under an agreement with a landowner. Commercial agriculture shall be defined as utilization of land for the raising of hay grain crops or livestock for profit. All landowners or tenants that do not reside on the property must possess a valid hunting license.

g) Landowners or tenants are not required to participate in the public drawing for permits. Landowner/tenant permits are valid for the entire 31 days encompassed by the 4 seasons but allow the taking of only one wild turkey.

h) The immediate family is limited to the spouse children and parents permanently residing on the same property as the landowner or tenant.

i) Proof of ownership for all free landowner or tenant applications

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must be provided by one of the following methods:

A) Submittal of a copy of property deed;
B) Submittal of a copy of contract for deed;

C) Submittal of a copy of most recent real estate tax statement upon which landowner's name appears;

B) Submittal of a copy of either an Agricultural Stabilization and Conservation Service Form 476 or Commodity Credit Corporation Form 477; or

B) Submittal of a copy of a trust agreement which must indicate that the trust owns at least 40 acres and the applicant is a beneficiary of the trust;

3) If you are applying for a tenant permit you are required to submit in addition to the landowner certification and proof of ownership a copy of one of the following:

A) Submittal of a copy of a lease (not a hunting rights lease) or rental agreement file stamped as recorded by the county clerk covering the current year; or

B) Submittal of a copy of either an Agricultural Stabilization and Conservation Service Form 476 or Commodity Credit Corporation Form 477;

4) A hunting rights lease or other non-agricultural lease is not valid for a landowner or tenant permit;

5) If the property is owned or rented by more than one person only one landowner and his immediate family or one tenant and his immediate family will be issued a permit for every 40 acres of owned or rented land. For example if 3 persons own 99 acres 2 of the landowners and their immediate family may receive turkey permits;

6) Shareholders of corporations owning 40 or more acres of land in a county may apply for a free permit to hunt the corporation lands only. Only one permit per 40 acres for a maximum number of 15 permits per county shall be issued based on ownership of lands by corporations. Lands leased to corporations shall not be considered as a basis for a free permit for the shareholders of the lessee. Lands held in trust by corporations shall not be considered as a basis for a free permit by the shareholders of the trustee. If application is made for a free permit based upon lands owned by the corporation a duly authorized officer of the corporation must sign a notarized statement authorizing the applicant to hunt on the corporate lands for which a permit is being requested. This statement must identify the applicant as a shareholder identify authorization to hunt and identify that no more than 15 authorizations will be requested per county for the application upon submittal to the Permit Office.

7) Landowners or tenants who obtain a free permit to hunt their owned or leased property may apply for up to two additional county-wide permits (4500 feet from any permit area issued as of the second Monday in March in a random daily drawing.

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9) Applicants--for--free--landowner--or--tenant--permits--who--will--not--be at--least--16--years--of--age--by--the--opening--date--of--the--turkey hunting--season--applied--for--must--provide--proof--at--the--time--of application--that--they--have--held--a--hunting--license--issued--by--the State--of--Illinois--or--another--state--in--a--prior--year--or--a certificate--of--competency--as--provided--in--Section--3-2--of--the Wildlife--Code.

ntf) A \$3.00 service fee will be charged for replacement permits issued by the Department.

†tg) It shall be unlawful to:

- 1) Submit applications before the second Monday in March for receiving more than one permit for the same person, and thereafter, submittal of applications for receiving more than three permits for the same person. Applicants may apply for up to two additional permits prior to the second Monday in March if the application and the outside of the envelope are marked "Application for March Drawing - Additional Permit." Such applications will not be processed until the second Monday in March.
- 2) provide false and/or deceptive information on a permit application form. In addition to criminal charges, individuals found guilty of violating this section shall have their application rejected, permit revoked, and fees forfeited.

(Source: Amended at 18 Ill. Reg. _____, effective January 18, 1994.)

Section 710.21 Turkey Permit Requirements - Special Hunts (Renumbered)

(Source: Renumbered to Section 710.25 at 18 Ill. Reg. _____, effective January 18, 1994.)

Section 710.22 Turkey Permit Requirements - Landowner/Tenant Permits

- a) The "immediate family" is defined as the spouse, children, and parents permanently residing on the same property as the landowner or tenant.
- b) A tenant for the purpose of this Part is one who rents 40 acres or more land for commercial agricultural purposes under an agreement with a landowner. Commercial agriculture shall be defined as utilization of land for the raising of hay, grain crops or livestock for profit. A hunting rights lease, or other non-agricultural lease, is not valid for a landowner or tenant permit.
- c) Resident landowners who own 40 acres or more of land, and resident tenants renting or leasing 40 acres or more of commercial agricultural land, and members of their immediate family may apply for one free turkey permit for their property only in counties open for turkey hunting. All resident landowners/tenants that do not reside on the property must possess a valid hunting license. Non-resident Illinois landowners of 40 or more acres of land and members of their immediate

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- d) family are eligible to receive a permit for their property only for a fee of \$37.50.
- e) Landowners or tenants are not required to participate in the public drawing for permits. Landowner/tenant permits are valid for the entire 31 days encompassed by the 4 seasons, but allow the taking of only one wild turkey.
- f) Recipients of Landowner/Tenant permits to hunt their owned or leased property may apply for up to two additional county-wide permits from any permits not issued as of the second Monday in March in a random daily drawing. Fees for these additional permits shall be \$15.00 for residents and \$25.00 for nonresidents.
- g) Proof of ownership for all landowner or tenant applications must be provided by one of the following methods:
 - 1) Submittal of a copy of property deed;
 - 2) Submittal of a copy of contract for deed;
 - 3) Submittal of copy of most recent real estate tax statement upon which landowner's name appears;
 - 4) Submittal of a copy of either an Agricultural Stabilization and Conservation Service Form 476 or Commodity Credit Corporation Form 477; or
 - 5) Submittal of a copy of trust agreement which must indicate that the trust owns at least 40 acres and the applicant is a beneficiary of the trust.
- h) If you are applying for a tenant permit, you are required to submit, in addition to the landowner certification and proof of ownership, a copy of one of the following:
 - 1) Submittal of a copy of a lease (not a hunting rights lease) or rental agreement, file stamped as recorded by the County Clerk, covering the current year; or
 - 2) Submittal of a copy of either an Agricultural Stabilization and Conservation Service Form 476 or Commodity Credit Corporation Form 477.
- i) If the property is owned or rented by more than one person: Only one landowner (and his immediate family) or one tenant (and his immediate family) will be issued a permit for every 40 acres of owned or rented land. For example, if 3 persons own 90 acres, only 2 of the landowners and their immediate families may receive turkey permits.
- j) Shareholders of corporations owning 40 or more acres of land in a county may apply for a free permit to hunt the corporation lands only. Only one permit per 40 acres, for a maximum number of 15 permits per county, shall be issued based on ownership of lands by corporations. Lands leased to corporations shall not be considered as a basis for a free permit for the shareholders of the lessee. Lands held in trust by corporations shall not be considered as a basis for a free permit by the shareholders of the trustee. If application is made for a free permit based upon lands owned by the corporation, a duly authorized officer of the corporation must sign a notarized statement authorizing the applicant to hunt on the corporate lands for which a permit is being requested. This statement must identify the applicant as a

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shareholder, identify authorization to hunt and identify that no more than 15 authorizations will be requested per county for the corporation lands. This document must be attached to the application upon submittal to the Permit Office.

(Source: Added at 18 Ill. Reg. _____, effective January 18, 1994.)

Section 710.21-710.25 Turkey Permit Requirements - Special Hunts

a) Special hunts are regulated by the agency which manages the property. The Permit Office only issues turkey hunting permits for Savanna Army Depot (Jo Daviess County), Lowden Miller State Forest (Ogle County), and Site M (Cass County). The Department of Conservation allocates Turkey Permits for these areas through a computerized drawing. Hunters wishing to hunt special conservation areas other than those listed in this subsection must first acquire a Turkey Permit for the county in which the conservation area is located and then apply for the specific site drawing. (See Section 710.50 for a list of conservation areas and specific site application procedures.)

b) Each applicant must enclose a separate fee (check or money order) payable to the Department of Conservation, or the application will be returned. Applicants should not send cash with their applications. The Department will not be responsible for cash sent though the mail.

(Source: Renumbered from Section 710.21 and amended at 18 Ill. Reg. _____, effective January 18, 1994.)

Section 710.30 Turkey Hunting Regulations

It is unlawful:

- to use live turkey decoys, recorded calls, dogs, or bait;
- to take any wild turkey except a hen with a visible beard or a gobbler (male);
- to take, or attempt to take, more than three wild turkeys during the spring season, one must have a valid permit for each turkey that is taken;
- to use any weapon except a shotgun or bow and arrow. #4 shot is the largest and #7 1/2 is the smallest size shot that may be legally used. Archers may use a long, recurved, or compound bow with a minimum pull of 40 pounds at some point within a 28-inch draw; an arrow with a metal barbed broadhead that cannot pass through a 7/8 inch diameter hole is the only legal arrow. Any mechanical device capable of maintaining a drawn position or partially drawn position on a bow is illegal. All other bows and arrows, including electronic arrow tracking systems, are illegal;
- to hunt except from 1/2 hour before sunrise to noon during each day of the season;
- for any person having taken the legal limit of wild turkey(s) to

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further participate with a weapon in any hunting party for the purpose of taking additional wild turkeys;

g) for any person to possess while in the field during wild turkey season any turkey permit issued to another person (permits are non-transferable);

h) to transport or leave a wild turkey without first affixing the adhesive-backed turkey permit securely around the leg. Leg tag must be affixed to the turkey immediately upon kill and before the turkey is moved, transported or field dressed. The wild turkey shall be taken whole (or field dressed) to the designated check station for the county in which it was killed, or the closest check station, by the hunter in person, by 2:00 P.M. the same day it was killed. It will be checked, tagged and recorded by the Department at the check station;

i) For any person to shoot a wild turkey while it is in a tree before 7:00 a.m.;

j) for any person to hunt wild turkeys without possessing a wild Turkey Hunting Permit which shall include the hunter's signature, date of birth, Firearm Owner's Identification number (unless exempt), hunting license number (unless exempt) and physical description recorded on the permit and carried on the person while hunting;

k) For any person to use a turkey call or to attempt to call a turkey while in the field from April 1 through the day before turkey season in counties open to turkey hunting.

(Source: Amended at 18 Ill. Reg. _____, effective January 18, 1994.)

Section 710.50 Regulations at Various Department Owned or Managed Sites

a) Statewide regulations shall apply for the following sites:

Amox-Beased-Bands

Carlyle Lake Wildlife Management Area

Dog Island Wildlife Management Area

I-24 Wildlife Management Area

Kaskaskia River Fish and Wildlife Area - except for that area lying north of Highway 154, east of the Kaskaskia River and south of the Risdon School Road and Beck's Landing access road

Barue-Scatters

Mark Twain N.W.R., Gardner Division

Mississippi River Fish and Wildlife Area (Pools 25 and 26)

Mississippi River Pools 16, 17 and 18

Mississippi River Pools 21, 22, and 24

Oakwood-Bottoms

Panther Creek Conservation Area

Rock County Conservation Area

Reckhouse Creek-(Montee-County)

Saline County Conservation Area

Sunspot Mine (Fulton and Schuyler Counties)

Wildcat Hollow State Forest

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- b) Statewide regulations shall apply except that all hunters must check in and out and report turkeys harvested at the check station for the following sites:

Anderson Lake Conservation Area
 Cache River State Natural Area - Little Black Slough Hunting Area
 Fort de Chartres - muzzleloading shotgun or archery only
 Giant City State Park - hunting allowed only in designated zones
~~Kaskaskia-River-State-Fish-and-Wildlife-Area---south-of-Highway-154-only~~
~~Kinkaid-Kinkaid Lake Fish and Wildlife Area~~
 Pere Marquette State Park - designated open zone in southeast portion of the Park only
 Trail of Tears State Forest
 Turkey Bluffs Fish and Wildlife Area
 Union County Conservation Area - Firing line management unit and Public hunting area only
 Weinburg-King State Park - hunting allowed only in designated zones

- c) Statewide regulations shall apply and a drawing will be held the day prior to each day's hunt to fill the area's daily hunter quota. All hunters must check in and out at the check station. Hunters will be allowed to hunt in designated zones only.

Argyle Lake State Park
 Big River State Forest
 Castle Rock State Park
~~Bowden-Miller-State-Forest~~
 Mississippi Palisades State Park
 Pere Marquette State Park
 Randolph County Conservation Area
 Siloam Springs State Park
 Tapley Woods State Natural Area
 Witkowsky Conservation Area

- d) Statewide regulations shall apply except that all hunters must sign in and check out to report turkeys harvested. There will be a daily quota of hunters which will be taken on a first-come, first-served basis. Hunters will not be allowed to sign in prior to 4 a.m. each day of the season.

Empty Woods

- e) Statewide regulations shall apply and a drawing will be held the day prior to each of the three seasons to fill the hunter quota. All hunters must check in and out at the check station. Hunters will be allowed to hunt in designated zones only.

Beaver Dam State Park
 Big Bend State Fish and Wildlife Area
 Ferne Clyffe State Park
 Mackinaw River State Fish and Wildlife Area
 Panther Creek Conservation Area
 Sand Ridge State Forest
 Sanganois State Wildlife Area

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Stephen A. Forbes State Park
 Ramsey Lake State Park

- e) Statewide regulations shall apply except hunting is by special permit obtained through statewide lottery for the site. Hunters must check in, check out, and report harvest.

Lowden Miller State Forest (Ogle County)
 Site M (Cass County)

- f) Additional regulations may be posted at the sites when more restriction is required. These additional regulations shall include, but not be limited to, selected check stations, limited hunting hours, and designated first-come first-serve sites.

(Source: Amended at 18 Ill. Reg. _____, effective January 18, 1994)

Section 710.60 Releasing or Stocking of Turkeys

No person, except employees of the Department shall release any turkeys in this State at any time. Game Breeding and Shooting Preserve Areas licensed pursuant to Section 3.27 of the Wildlife Code (Ill. Rev. Stat. 1999 1991, ch. 61, par. 3.27) [520 ILCS 5/3.27] may release turkeys for the purpose of put-and-take hunting only. This Section encompasses all of the various subspecies of the turkey (Meleagris gallopavo), which includes the native wild turkey (Meleagris gallopavo silvestris), the domestic barnyard turkey (Meleagris gallopavo gallopavo) and all crosses between any two subspecies.

(Source: Amended at 18 Ill. Reg. _____, effective January 18, 1994)

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NOTICE OF ADOPTED REPEALER

- 1) The Heading of the Part: Learning Assessment and School Improvement Plans.
- 2) Code Citation: 23 Ill. Adm. Code 210.
- 3)

<u>Section Number:</u>	<u>Adopted Action:</u>
210.10	Repeal
210.100	Repeal
210.110	Repeal
210.120	Repeal
210.130	Repeal
210.140	Repeal
210.150	Repeal
210.200	Repeal
210.210	Repeal
210.220	Repeal
- 4) Statutory Authority: Ill. Rev. Stat. 1991, ch. 122, pars. 2-3.63, 2-3.64, and 27-1; (105 ILCS 5/2-3.63, 5/2-3.64, and 27-1).
- 5) Effective Date of Rules: January 10, 1994
- 6) Does this rulemaking contain an automatic repeal date? No.
- 7) Does this repealer contain incorporations by reference?
Yes.
- 8) Date Filed in Agency's Principal Office: January 10, 1994.
- 9) Notice of Proposal Published in Illinois Register:
July 9, 1993; 17 Ill. Reg. 10061.
- 10) Has JCAR issued a Statement of Objections to rule(s)? No.
- 11) Difference(s) between proposal and final version: None.
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR?
No changes were requested by JCAR.
- 13) Will this repealer replace an emergency repealer currently in effect? No.
- 14) Are there any amendments pending on this Part? No.

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NOTICE OF ADOPTED REPEALER

- 15) Summary and Purpose of Repealer: This entire Part is being repealed. All the rules contained in Part 210 have been replaced or subsumed by concurrent amendments to the Board's rules for Public Schools Evaluation, Recognition and Supervision (23 Ill. Adm. Code 1). The amendments will establish a new school recognition process and will incorporate or make obsolete the material in Part 210.
- 16) Information and questions regarding this adopted repealer shall be directed to:

Name:	Ray Schaljo
Address:	Illinois State Board of Education 100 North First Street (N-243) Springfield, Illinois 62777-0001
Telephone:	(217) 782-3371

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- 1) The Heading of the Part: Public Schools Evaluation, Recognition and Supervision.
- 2) Code Citation: 23 Ill. Adm. Code 1.
- 3)

<u>Section Number:</u>	<u>Adopted Action:</u>
1.10	Amendment
1.20	Amendment
1.30	Amendment
1.40	Amendment
1.50	Amendment
1.60	Amendment
1.70	Amendment
1.80	Amendment
1.90	New Section
1.100	New Section
1.Appendix D	New Section
1.Appendix E	New Section
1.Appendix F	New Section
1.Appendix G	New Section
- 4) Statutory Authority: Ill. Rev. Stat. 1991, ch. 122, par. 2-3.6 (105 ILCS 5/2-3.6).
- 5)

<u>Effective Date of Rules:</u>	January 10, 1994
---------------------------------	------------------
- 6) Does this rulemaking contain an automatic repeal date? No.
- 7) Does this amendment contain incorporations by reference?
The rules do include an incorporation by reference under Section 5-75 of the Illinois Administrative Procedure Act.
- 8) Date Filed in Agency's Principal Office: January 10, 1994.
- 9) Notice of Proposal Published in Illinois Register: July 9, 1993; 17 Ill. Reg. 10079.
- 10) Has JCAR issued a Statement of Objections to this rule(s)?
No.
- 11) Difference(s) between proposal and final version:
Section 1.10 Definitions
Several of the definitions in this Section were revised, as follows:

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Benchmark Grade: A grade designated by a school district as one in which students' performance relative to one or more ~~State Goals for Learning~~ learning outcomes will be assessed as identified in the School Improvement Plan for each school.

The word "educational" has been inserted before the word "indicator" throughout the definition of "Educational Indicator."

School: An attendance center within a district as defined by the board of education for the district.

Standard for a Learning Outcome: The criteria by which students are determined to have attained a specified level of proficiency in relation to a learning outcome as measured by the assessment(s). A standard is derived from two activities: ~~the identification of a learning outcome and the identification of the assessment method(s)~~ identification of the assessment instruments and procedures used to measure students' learning related to ~~that~~ a learning outcome, and identification of the minimum scores required to evidence successful achievement of the learning outcome. Until October 1, 1995, standards for learning objectives developed pursuant to the requirements of 23 Ill. Adm. Code 210 (Learning Assessment and School Improvement Plans) may be substituted for standards for learning outcomes as a transitional measure.

Validity: The extent to which an assessment method produces ~~appropriate~~ accurate, meaningful, and useful measures ~~information by way of content reference, sufficiency, and generalizability of the skills and knowledge it was designed to assess.~~

Section 1.30 Development of School Improvement Plans

Section 1.30(c)(7) has been amended as follows:

The development of each School Improvement Plan shall include consideration of issues of articulation. Upon request, each school shall transmit copies of its School Improvement Plan to the principal or chief administrative officer of each other school to or from which its students are promoted, to allow articulation of the instructional program. Magnet schools and any

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~~other schools drawing students from or sending them to an indefinite number of other schools shall meet this requirement by making their school improvement plans available upon request.~~

Section 1.30(d) has been revised as follows:

Each School Improvement Plan shall include for the school specified in the plan the following elements: for the benchmark grade(s) applicable to the school, detailed requirements for each of these elements are presented in Section 1.40.

Section 1.40 Student Performance and School Improvement Requirements

Section 1.40(c)(5) has been changed as follows:

Identification of the grade(s) at which assessment takes place. Student performance relative to each state goal for learning outcome shall be assessed every school year at least at the benchmark grades for the specific goal.

In Section 1.40(c)(8), "as to" has been changed to "for."

In Section 1.40(c)(10), the word "inform" has been replaced with the word "make."

Section 1.40(d)(1) has been changed as shown below:

There must be a systematic collection and analysis of student performance data as they become available, with emphasis on ~~longitudinal~~ current and prior years' assessment data by standard for each learning outcome, with an indication of the percent of students assessed, including those in identified groups in the school's student population, who met the standards.

Section 1.40(d)(2) has also been revised:

~~Annual data and trend~~ Current and prior years' data collected on student performance must be used in considering ways to improve student achievement and the programs of instruction at the school relative to the

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standards established for meeting the learning outcomes.

The same change was made in Section 1.40(f)(1):

Expectations for students at the school must be reviewed annually based on ~~longitudinal~~ current and prior years' student performance data.

A period was deleted from the heading for subsection 1.40(h).

The phrase "Within 30 days of" was changed to read "Within 30 days after" in subsections 1.40(h)(2) and 1.40(h)(3).

Section 1.50 State Assessment

Section 1.50(d)(3) has been corrected as follows:

Does Not Meet State Standards (more than 50% of ~~more of~~ all test scores do not meet state standards).

The phrase "Within 30 days of" was changed to read "Within 30 days after" in subsection 1.50(e) and in subsection 1.50(e)(1).

Section 1.60 Operational Compliance

The phrase "Within 30 days of" was changed to read "Within 30 days after" in subsection 1.60(b) and subsection 1.60(b)(1).

Appendix E - Glossary of Terms

Methods of Assessment: ~~Tests~~ Instruments and procedures used to measure student performance...

Students: Those pupils ~~who~~ whose performance is assessed...

The subtitle following the glossary has been amended to read "Assignment of Point Values for the Student Performance and School Improvement Determination."

The evaluation criteria have been revised as follows:

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- 1-1 Description of student population, identification of significant groups in the population relevant to learning outcomes and consideration of attendance variables-

3 ~~The Demographic information on the total student population of the school is maintained, indicating the number and percent of students at each grade who are receiving special education services, who are receiving Chapter 1 services, who are participating in a gifted program, who are participating in a vocational program, who have limited English proficiency, and who are members of various gender, racial/ethnic, socio-economic or other groups which warrant description or emerge as a result of analysis of demographic information, described in terms of characteristics which may affect student learning. All students are accounted for~~
 • ~~Gender, racial, or socio-economic groups or other groups~~ Groups in the student population which warrant description or emerge as a result of analysis of data whose performance data will be disaggregated are identified.

4 ~~the Demographic information on the total student population of the school is maintained, indicating the number and percent of students at each grade who are receiving special education services, who are receiving Chapter 1 services, who are participating in a gifted program, who are participating in a vocational program, who have limited English proficiency, and who are members of various gender, racial/ethnic, socio-economic or other groups which warrant description or emerge as a result of analysis of demographic information, described in terms of characteristics which may affect student learning. All students are accounted for~~
 • ~~Gender, racial, or socio-economic groups or other groups~~ Groups in the student population which warrant description or emerge as a result of analysis of data whose performance data will be disaggregated are identified.

While some of the following revisions were specifically mentioned, a commenter also brought to light some additional needed changes in this section:

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A period was deleted from the heading of item 1-2.

2-1 Learning Outcomes

2 - ~~there is little or no evidence that learning~~ Learning outcomes have ~~not~~ been developed.

2 - third point - Replace with the following: There is some alignment of the curriculum with learning outcomes.

3 - first point - ...for at least two grades for a K-8 1-8 attendance center...

2-2 Standards

1 - ~~there is little or no evidence that standards~~ Standards for the school ~~do not~~ exist for learning outcomes ~~or standards that do exist are incorrectly stated.~~

2-3 Expectations

1- ~~there is little or no evidence that expectations~~ Expectations have ~~not~~ been established for the school.

3-1 Coordination of assessment instruments and procedures with learning outcomes

1 ~~there is little or no evidence that learning~~ Learning outcomes for the school are ~~not~~ assessed by assessment instruments and procedures.

2 ~~learning~~ Some learning outcomes for the school in all required fundamental learning areas are assessed by assessment instruments and procedures administered at least at benchmark grades.

3 ~~All~~ Some learning outcomes for the school for all fundamental learning areas are assessed by a variety of assessment instruments and procedures that address the scope, content, and specificity of the learning outcome and are administered to students at least at benchmark grades.

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4 All learning outcomes for the school in all fundamental learning areas are assessed by a variety of assessment instruments and procedures that address the scope, content, and specificity of the learning outcome and are administered to students at least at benchmark grades.

3-2 Validity of Assessment Instruments and Procedures

1 - All existing text has been replaced with the following:

There is little or no evidence that assessment instruments and procedures used to measure student achievement for learning outcomes will produce student performance results which are valid measures of the learning outcomes.

2 - first point - Claims for content validity are documented for all instruments and procedures used to measure student achievement of learning outcomes for the school.

3 - first point - Claims for content validity are documented for all instruments and procedures used to set standards for measure student achievement of learning outcomes for the school.

3-3 Reliability of assessment instruments and procedures

The phrase "by qualified staff" has been deleted from the end of each sentence.

3-4 Nondiscrimination

The references to "racial" differences have been changed to state "race/ethnic" differences.

4-1 and 4-2 - These two sections have been reversed and modified as shown below.

4-2 4-1 Data sufficiency for decision-making

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2 - first point - ~~Only limited~~ Limited data are available for the school for the most recent academic year that are based on results from valid, reliable, and nondiscriminatory assessment instruments and procedures for learning outcomes and that are used to make decisions regarding student progress for each performance relative to learning outcome outcomes, including that of data for any groups in the student population identified for disaggregate data analysis.

2 - second point - These data for the school are used to track student achievement over time in the establish current and prior years' student performance in all fundamental learning areas.

3 - first point - ~~The data~~ Data available for the school for the most recent academic year are based on results from a variety of valid, reliable, and nondiscriminatory assessment instruments and procedures used to set standards for and are used to make decisions regarding student performance relative to each learning outcomes outcome.

3 - second point - ~~There is a complete~~ The data set for the school which states is sufficient in its description of student performance on each dimension of a standard, is sufficient in its description of and student performance in meeting the standard sufficient to make decisions regarding student progress for each learning outcome, including that of and includes data for groups in the student population identified for disaggregate data analysis for the most recent academic year.

3 - fourth point - ~~These data are used to track student achievement over time in the fundamental learning areas.~~ Current and prior years' student performance data relative to each learning outcome have been established.

4-1 4-2 Compilation and analysis of assessment data

3 - third point - A process for identifying strengths and weaknesses of the student performance relative to all learning outcomes for the total population and for

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~~groups identified for data disaggregation is evident population of the school is evident.~~

3 - The fourth and fifth points have been deleted.

4 - third point - A formal process for identifying strengths and weaknesses of the student performance relative to all learning outcomes for the total population of the school and for groups identified for data disaggregation is evident ~~population of the school is in place.~~

4 - The fourth, fifth, and sixth points have been deleted.

5-1 Evaluation of student performance by standard

2 - The last point has been deleted.

3 - last point - Points awarded for data sufficiency ~~(4-2) (4-1)~~ are two (2) or more.

4 - last point - Points awarded for data sufficiency ~~(4-2) (4-1)~~ are three (3) ~~or more.~~

5 - last point - Points awarded for data sufficiency ~~(4-2) (4-1)~~ are three (3) ~~or more.~~

6 - last point - Points awarded for data sufficiency ~~(4-2) (4-1)~~ are ~~four (4)~~ three (3).

5-2 Program evaluation

2 - second point - There is no evidence of formal program evaluation that identifies probable causes for the failure of students, in groups identified ~~groups in the student population for data disaggregation~~ to meet standards for learning outcomes (if applicable).

3 - second point - Evidence exists that there is formal program evaluation for the school that identifies probable causes for the failure of students, in groups identified ~~groups in the student population for data disaggregation~~ to meet standards for learning outcomes (if applicable).

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4 - second point - Compelling evidence exists that there is formal program evaluation that identifies probable causes for the failure of students, in groups identified ~~groups in the student population for data disaggregation~~ to meet standards for learning outcomes (if applicable).

6 - The title of this component has been changed to: "Review of Expectations and Implementation of Activities to Increase Student Performance"

6-2 Activities planned to increase student performance to meet new or existing expectations and consideration of changes in demographics or instruction in establishing expectations

1 - last point - There is little or no evidence of planned strategies for improving student attendance, truancy, graduation rates, ~~and~~ or the climate of the school to enhance instructional efforts.

2 - second point - These changes are ~~incremental~~ not systematic and are not directed by student performance data for the school.

2 - last point - There is evidence of planned strategies for improving student attendance, truancy, graduation rates, ~~and~~ or the climate of the school to enhance instructional efforts.

3 - second point - These changes are ~~incremental~~ and are directed by not systematic but are developed with consultation of student performance data for the school.

3 - last point - There is evidence of planned strategies for improving student attendance, truancy, graduation rates, ~~and~~ or the climate of the school to enhance instructional efforts.

4 - last point - There is compelling evidence of formal, planned strategies for improving student attendance, truancy, graduation rates, ~~and~~ or the climate of the school to enhance instructional efforts.

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7-1 Reporting to the Public

4 - third point - Information is complete in all ~~communication formats~~ reporting formats for various publics.

4 - last point - ~~People~~ Appropriate training is provided for those people responsible for providing information on student progress in meeting standards for learning outcomes ~~are qualified and provided appropriate training.~~

Appendix F

Changes have been made in the student performance and school improvement criteria for determination, as shown below.

Beginning on October 1, 1995, the following point ranges will apply.

Does Not Meet Student Performance and School Improvement Standards	16 - 40
Does Not Fully Meet Student Performance and School Improvement Standards	41 - 52 49
Meets Student Performance and School Improvement Standards	50 53 - 64
Exceeds Student Performance and School Improvement Standards	65 - 70

Appendix G

The 11th grade student performance standards for science have been revised to reflect the Assessment Committee's decision to reestablish 1992 as the base year reporting scale. The upper limit for level 1 was 183 and has been changed to 185. Accordingly, the range for level 2 has been changed to 186-326 and the range for level 3 is 327-500.

- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR?

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Yes. (No agreement letter was issued because all changes requested by JCAR were minor technical or grammatical ones.)

- 13) Will this amendment replace an emergency amendment currently in effect? No.

- 14) Are there any amendments pending on this Part? No.

- 15) Summary and Purpose of Amendments: These amendments implement the provisions of P.A. 87-559, which called for a new system of public school recognition standards regarding student performance and school improvement, as well as a system of rewards for excellence and interventions for poor performance. The amendments describe the process by which public schools will receive the components of their recognition and accreditation status and set forth the basis on which the various determinations will be made.

- 16) Information and questions regarding this adopted amendment shall be directed to:

Name: Ray Schaljo
Address: Illinois State Board of Education
100 North First Street (N-243)
Springfield, Illinois 62777-0001
Telephone: (217) 782-3371

The full text of the adopted amendments begins on the next page:

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TITLE 23: EDUCATION AND CULTURAL RESOURCES

CHAPTER I: STATE BOARD OF EDUCATION

SUBCHAPTER a: PUBLIC SCHOOL RECOGNITION

PART 1

PUBLIC SCHOOLS EVALUATION, RECOGNITION AND SUPERVISION

SUBPART A: ~~RECOGNITION AND SUPERVISION~~ SCHOOL ACCREDITATION

Section	
1.10	Periodic Evaluation Definitions
1.20	Evaluation by Public School Approval Section and Regional Superintendent The School Accreditation Process
1.30	Development of Learning Assessment and School Improvement Plans
1.40	Setting Further Audit Student Performance and School Improvement Requirements
1.50	Three Types of Recognition Status State Assessment
1.60	Reevaluation Operational Compliance
1.70	Effective Dates of Recognition Status Accreditation
1.80	Appeals Academic Watch List
1.90	System of Rewards and Recognition
1.100	Waiver of Rules

SUBPART B: SCHOOL GOVERNANCE

Section	
1.210	Powers and Duties
1.220	Duties of Superintendent
1.230	Board of Education and the School Code
1.240	Equal Opportunities for all Students
1.245	Waiver of School Fees
1.250	District to Comply with 23 Ill. Adm. Code 175 and 185
1.260	Commemorative Holidays to be Observed by Public Schools
1.270	Book and Material Selection
1.280	Discipline
1.290	Absenteeism and Truancy Policies

SUBPART C: SCHOOL DISTRICT ADMINISTRATION

Section	
1.310	Administrative Responsibilities
1.320	Duties
1.330	Hazardous Materials Training

SUBPART D: THE INSTRUCTIONAL PROGRAM

Section

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1.410	Determination of the Instructional Program
1.420	Basic Standards
1.430	Additional Criteria for Elementary Schools
1.440	Additional Criteria for High Schools
1.450	Special Programs
1.460	Credit Earned Through Proficiency Examinations
1.462	Uniform Annual Consumer Education Proficiency Test
1.465	Ethnic School Foreign Language Credit and Program Approval

1.470	Adult and Continuing Education
1.480	Correctional Institution Educational Programs

SUBPART E: SUPPORT SERVICES

Section	
1.510	Transportation
1.520	School Food Services
1.530	Health Services
1.540	Pupil Personnel Services

SUBPART F: STAFF CERTIFICATION REQUIREMENTS

Section	
1.610	Public School Districts
1.620	Accreditation of Staff
1.630	Noncertificated Personnel
1.640	Requirements for Different Certificates
1.650	Transcripts of Credits
1.660	Records of Professional Personnel

SUBPART G: STAFF QUALIFICATIONS

Section	
1.705	Minimum Requirements for Teachers
1.710	Minimum Requirements for Elementary Teachers
1.720	Minimum Requirements for Teachers of Junior High and Departmentalized Upper Elementary Grades
1.730	Minimum Requirements for Secondary Teachers and Specified Subject Area Teachers in Grades Six (6) and Above
1.735	Requirements to Take Effect on July 1, 1991
1.736	Requirements to Take Effect on July 1, 1994
1.740	Standards for Reading
1.750	Standards for Media Services
1.760	Standards for Pupil Personnel Services
1.770	Standards for Special Education Personnel
1.780	Standards for Teachers in Bilingual Education Programs
1.781	Requirements for Bilingual Education Teachers in Grades K-12

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- 1.782 Requirements for Teachers of English as a Second Language in Grades K-12
 1.790 Substitute Teacher

SECTION 1. APPENDIX A

Professional Staff Certification
 Certification Quick Reference Chart
 Glossary Of Terms

SECTION 1. APPENDIX B

State Goals for Learning

SECTION 1. APPENDIX C

Evaluation Criteria - Student

SECTION 1. APPENDIX D

Performance and School Improvement

SECTION 1. APPENDIX E

Determination

SECTION 1. APPENDIX F

Criteria for Determination - Student

SECTION 1. APPENDIX G

Performance and School Improvement

SECTION 1. APPENDIX H

Criteria for Determination - State Assessment

AUTHORITY: Implementing Sections 2-3.25, 2-3.43, 2-3.44, 2-3.96, 10-17a, 10-20.14, 10-22.43a, 14C-8, 26-13, 27-12.1, 27-13.1, 27-20.3, 27-20.4, 27-20.5, 27-22, and 27-23.3 and authorized by Section 2-3.6 of the School Code (Ill. Rev. Stat. 1991, ch. 122, pars. 2-3.25, 2-3.43, 2-3.44, 2-3.96, 10-17a, 10-20.14, 10-22.43a, 14C-8, 26-13, 27-12.1, 27-13.1, 27-20.3, 27-20.4, 27-20.5, 27-22, and 27-23.3, and 2-3.6) [105 ILCS 5/2-3.25, 2-3.43, 2-3.44, 2-3.96, 10-17a, 10-20.14, 10-22.43a, 14C-8, 26-13, 27-12.1, 27-13.1, 27-20.3, 27-20.4, 27-20.5, 27-22, 27-23.3, and 2-3.6].

SOURCE: Adopted September 21, 1977; codified at 7 Ill. Reg. 16022; amended at 9 Ill. Reg. 8608, effective May 28, 1985; amended at 9 Ill. Reg. 17766, effective November 5, 1985; emergency amendment at 10 Ill. Reg. 14314, effective August 18, 1986, for a maximum of 150 days; amended at 11 Ill. Reg. 3073, effective February 2, 1987; amended at 12 Ill. Reg. 4800, effective February 26, 1988; amended at 14 Ill. Reg. 12457, effective July 24, 1990; amended at 15 Ill. Reg. 2692, effective February 1, 1991; amended at 16 Ill. Reg. 18010 effective November 17, 1992; expedited correction at 17 Ill. Reg. 3553, effective November 17, 1992; amended at 18 Ill. Reg. _____, effective January 10, 1994.

NOTE: Capitalization denotes statutory language.

SUBPART A: ~~RECOGNITION AND SUPERVISION~~ SCHOOL ACCREDITATIONSection 1.10 ~~Periodic Evaluation~~ Definitions

~~Each school will be periodically visited for the purpose of recognition. Each evaluation will be led by a representative~~

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~~from the Public School Approval Section of the State Board of Education and will include the respective Regional Superintendent or designee.~~

The following definitions apply to the accreditation system described in this Subpart A.

Accreditation Status: Statements as to the operational compliance, student performance and school improvement, and, if applicable, state assessment determinations for a school made in accordance with this Subpart A.

Benchmark Grade: A grade designated by a school district as one in which students' performance relative to one or more learning outcomes will be assessed as identified in the School Improvement Plan for each school.

Expectation: An estimate of the percent of students in a school who will meet the defined standard for a learning outcome.

Educational Indicator: A statistic that tells something about the performance of a school. For a statistic to be an educational indicator, there must be a standard against which it can be judged. Educational indicators must meet certain substantive and technical standards that define the kind of information they should provide and the features they should measure. The primary educational indicators are those which quantify or describe student performance; other important educational indicators include attendance, graduation, mobility, truancy and dropout rates.

Learning Outcome: A statement of what students should know and be able to do in order to demonstrate achievement of a State Goal for Learning or portion thereof. A learning outcome: addresses the content of one or more State Goal(s) for Learning; is broader in focus than a learning objective; probes the range and depth of thinking skills appropriate to the State Goal(s) for Learning; is amenable to assessment; may integrate fundamental learning areas; and may reflect problems and tasks found outside the classroom.

Quality Review: The school visitation process in which representatives of the State Board of Education ascertain and/or verify information regarding a school.

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Reliability: Consistency or stability of assessment results.

School: An attendance center within a district as defined by the board of education for the district.

School Accreditation Process: The system described in this Subpart A by which the State Board of Education evaluates schools.

School Improvement: Systematic changes in the educational programs of a school which bring about improved academic achievement over time, as evidenced by data.

School Improvement Plan: A document applicable to a specified school as set forth in Section 1.30 of this Part.

Standard for a Learning Outcome: The criteria by which students are determined to have attained a specified level of proficiency in relation to a learning outcome as measured by the assessment(s). A standard is derived from two activities: identification of the assessment instruments and procedures used to measure students' learning related to a learning outcome, and identification of the minimum scores required to evidence successful achievement of the learning outcome. Until October 1, 1995, standards for learning objectives developed pursuant to the requirements of 23 Ill. Adm. Code 210 (Learning Assessment and School Improvement Plans) may be substituted for standards for learning outcomes as a transitional measure.

State Goals for Learning: Statements of what students should know and be able to do in each of the fundamental learning areas as a result of their schooling. (See Appendix D.)

Student: A pupil enrolled in a district and assigned to an attendance center.

Student Performance: The achievement of students relative to the standards established for that school and those students.

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Validity: The extent to which an assessment method produces accurate, meaningful, and useful measures of the skills and knowledge it was designed to assess.

(Source: Amended at Ill. Reg. _____, effective January 10, 1994.)

Section 1.20 ~~Amended by Public School Approval Section and Regional Superintendent The School Accreditation Process~~

~~the Public School Approval Section and the Regional Superintendent will determine the extent to which the educational program is meeting the specified requirements of the state.~~

a) Each public school district shall participate annually in a School Accreditation Process as described in this Subpart A, whereby evidence is provided for each of its schools as to operational compliance, meeting student performance and school improvement standards, and, if applicable, participation in the state assessment.

b) Each school district shall submit an Application for Accreditation for each of its schools by October 1 of each year in the form designated by the State Board of Education. At the times and in the forms determined by the State Board, additional information may also be required concerning the district's school(s), or the school(s) may be visited, to ascertain the appropriate accreditation status for the school(s) or to review a previously assigned accreditation status. Except as provided in Section 1.90 of this Part, each school shall receive a Quality Review visit at least once every five school years to verify or determine the extent to which it is meeting student performance and school improvement standards.

c) The determination as to operational compliance is based upon the requirements imposed by the State Board of Education pursuant to Section 2-3.25 of the School Code (Ill. Rev. Stat. 1991, ch. 122, par. 2-3.25) (105 ILCS 5/2-3.25) and this Part.

d) The determination as to meeting student performance and school improvement standards is based upon evaluation of the educational indicators, learning outcomes and the standards applicable to the learning outcomes, expectations, and data collection and validation procedures identified in the School Improvement Plan as required by Sections 1.30 and 1.40 of this Part. The

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evaluation and scoring criteria for this determination are set forth in Appendices E and F to this Part.

- e) The determination as to meeting state assessment standards is based upon the state assessment results exhibited by the students in that school. (See Section 1-50 of this Part.) The criteria for this determination are set forth in Appendix G to this Part.

- f) The determinations regarding operational compliance, student performance and school improvement, and, if applicable, state assessment comprise the accreditation status for a school. For schools in which no students are required to participate in the state assessment, an accreditation status will be determined by the degree to which that school meets operational compliance requirements and student performance and school improvement standards.

(Source: Amended at Ill. Reg. ____, effective January 10, 1994)

Section 1.30 Development of Learning Assessment and School Improvement Plans

~~Each district shall develop Learning Assessment and School Improvement Plans in accordance with the requirements set forth in 23 Ill. Adm. Code 210 (Learning Assessment and School Improvement Plans).~~

School districts shall ensure that each school makes available to all students instruction in the six fundamental learning areas (Language Arts, Mathematics, Biological and Physical Sciences, Social Sciences, Fine Arts, and Physical Development and Health) as set forth in Section 27-1 of the School Code. Each school district shall ensure that a continuous school improvement process that includes all State Goals for Learning is implemented for each school in the district. School improvement activities for each year must be implemented based on the percentage of students who did not meet state or local standards for the school in the previous year. For each of its schools, the district shall describe the improvement process and report data about the school in a document known as the School Improvement Plan, as set forth herein.

- a) Each school district is accountable for ensuring that each student for which its schools are responsible is provided an instructional program and corresponding curriculum that comprehensively address all the State

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Goals for Learning. Each school district shall identify at least two grade levels among grades 1-8 and one grade among grades 9-12 as "benchmark grades" for each fundamental learning area, for which the requirements detailed in subsection (d) below will be met and documented in a School Improvement Plan. In addition:

- 1) For schools which do not offer the grades selected as district benchmark grades, districts shall identify substitute grades so that the requirements detailed in subsection (d) below are met and documented in a School Improvement Plan for at least one grade in every school.

- 2) Where grade levels are not used to demarcate educational progress in a school, students' performance shall be assessed with respect to all standards for each learning outcome at least once during the period of student attendance, if the attendance center serves students for six or fewer school years, and at least twice during the period of student attendance, if the attendance center serves students for seven or more school years.

- b) Districts may identify different benchmark grades for different learning outcomes within a fundamental learning area, provided that a rationale for doing so is included in the School Improvement Plan.

- c) There shall be prepared for each school a written School Improvement Plan conforming to the requirements of subsection (d) below by June 30, 1994. Districts shall ensure that each School Improvement Plan is reviewed and updated at least annually, subject to the following requirements.

- 1) School Improvement Plans may be revised at any time, provided that benchmark grades may only be changed as part of an annual Application for Accreditation and with the approval of the State Superintendent of Education. The rationale for the change must be included in the annual Application, and in the School Improvement Plan after approval. If the rationale presented includes evidence that the change is being made for school improvement purposes, the change will be approved.

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- 2) Student achievement at least at the benchmark grades must be evaluated annually to determine whether students' performance is meeting the school's standards.
- 3) The programs of instruction at the school must be evaluated annually to determine whether students are being well served by them.
- 4) Expectations must be established annually, based on student performance data.
- 5) The development of each School Improvement Plan shall include communication with the staff and community of the specified school, and each Plan shall be approved by the district board of education. All revisions to an approved Plan shall be communicated to the school staff and community and shall be reported to the district board of education at least annually.
- 6) School Improvement Plans for the most recent five years are to be kept in the main office of the school and shall be available to all State Board personnel, district personnel, and community members.
- 7) The development of each School Improvement Plan shall include consideration of issues of articulation. Upon request, each school shall transmit copies of its School Improvement Plan to the principal or chief administrative officer of each other school to or from which its students are promoted, to allow articulation of the instructional program.
- d) Each School Improvement Plan shall include for the school specified in the Plan the following elements: detailed requirements for each of these elements are presented in Section 1.10.
- 1) An analysis of existing conditions, including demographic characteristics of the student population, accounting for all students and identifying student groups within the population (i.e., at least those who are receiving special education services or Chapter 1 services, are

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- participating in a gifted or vocational education program, have limited English proficiency, or are of various gender, racial, socio-economic or other groups which warrant description or emerge as a result of analysis of data; factors which may affect student learning; and the needs of students relating to learning outcomes as perceived by school staff.
- 2) A list of the school's learning outcomes, standards, and expectations. Until October 1, 1995, learning objectives developed pursuant to the requirements of 23 Ill. Adm. Code 210 (Learning Assessment and School Improvement Plans) may be substituted for learning outcomes as a transitional measure. As of October 1, 1995, learning outcomes must be established pursuant to Section 1.40 of this Part.
- 3) A description of the assessment system used to determine the extent to which students are achieving learning outcomes.
- 4) An analysis of the performance of students, including analyses specific to the groups identified pursuant to subsection (d)(1) above, based on the results of assessment conducted in accordance with this Subpart A.
- 5) A discussion of the extent to which students are being served, and the degree of improvement in student performance in meeting standards for learning outcomes over time, including specific reference to the groups identified pursuant to subsection (d)(1) above, and of the factors that may have contributed to successes and failures.
- 6) Statements of new expectations and priorities for school improvement activities based on evaluation conclusions, with emphasis on students who did not meet standards.
- 7) A description of reporting procedures which inform the public at least annually about the extent to which standards for the school relative to learning outcomes for each State Goal for Learning were met, specify new expectations for the school.

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and describe priorities for school improvement activities.

(Source: Amended at Ill. Reg. _____, effective January 10, 1994)

Section 1.40 ~~Pending Further Audit~~ Student Performance and School Improvement Requirements

"Pending Further Audit" may be assigned to a district just visited because of limited violations which could be corrected within the current school year. This is a temporary condition and not an official recognition status.

The degree to which each school meets student performance and school improvement standards shall be based upon information provided in compliance with the requirements of Section 1.30 of this Part, Appendices E and F to this Part, and the following additional requirements.

a) Requirements for an Analysis of Existing Conditions

- 1) Maintenance of information on the student population of the school as to attendance, truancy, mobility, retention, and expulsion rates. Graduation rates and dropout rates are to be maintained for all high schools.
- 2) Inquiry as to the needs of students related to learning outcomes and on community characteristics which may affect student learning as perceived by school staff and the school community, with a rationale for selection.

b) Requirements for Learning Outcomes, Standards, and Expectations

- 1) Establishment of measurable learning outcomes for all students in at least the benchmark grades which define what students should know and be able to do in order to achieve the State Goals for Learning which are consistent with the primary purpose of schooling, as set forth in Section 27-1 of the School Code (Ill. Rev. Stat. 1991, ch. 122, par. 27-1) [105 ILCS 5/27-1]; and which are consistent with, and in total are at least as comprehensive as, the State Goals for Learning, and are developed in communication with school staff and the school community. There must be a

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formal and consultative process for developing learning outcomes and a rationale for the process and for the resulting outcomes. There must be formal alignment of the curriculum with the learning outcomes. Until October 1, 1995, learning objectives may be substituted for learning outcomes as a transitional measure.

- 2) Establishment of standards for all learning outcomes as defined in Section 1.10 of this Part. There must be a formal and consultative process for setting standards and a rationale for the process and for the resulting standards. Until October 1, 1995, standards for learning objectives developed pursuant to the requirements of 23 Ill. Adm. Code 210 (Learning Assessment and School Improvement Plans) may be substituted for standards for learning outcomes as a transitional measure.

- 3) Establishment of expectations for performance related to the achievement of all learning outcomes relevant to that school. There must be a formal and consultative process for establishing expectations and a rationale for the process and for the resulting expectations. Until October 1, 1995, expectations for performance related to the achievement of learning objectives may be substituted for expectations for performance related to the achievement of learning outcomes as a transitional measure.

- 4) Learning outcomes addressing the Language Arts, Mathematics, the Biological and Physical Sciences, the Social Sciences and the Fine Arts shall have been developed before the 1993-94 school year, pursuant to the applicable requirements of 23 Ill. Adm. Code 210 (Learning Assessment and School Improvement Plans). Learning outcomes addressing Physical Development and Health shall be completed by October 1, 1994.

c) Requirements for Assessment Systems

- 1) Development and implementation of an assessment system which enables determinations as to the extent to which all students enrolled in the school at least in the benchmark grades are

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meeting standards applicable to the relevant learning outcomes. The assessment system must include alternative assessment tests or procedures for students with disabilities or limited English proficiency.

- 2) A full description of each assessment test or procedure, including whether it is commercially published, developed by district personnel, or obtained elsewhere (such as from another district); whether it is a forced-choice/short answer or complex generated response assessment; the learning outcome(s) and grade(s) or course(s) of instruction for which it will be used; and the procedure and rationale for its selection.
- 3) Documentation of validity and reliability claims for each assessment test or procedure, citing the source(s) of evidence used.
- 4) Documentation of claims of nondiscrimination for each assessment test or procedure with respect to race, gender, and disability, citing the source(s) of evidence used.
- 5) Identification of the grade(s) at which assessment takes place. Student performance relative to each learning outcome shall be assessed every school year at least at the benchmark grades.
- 6) Results of all assessment conducted in accordance with this Subpart shall be maintained for the five most recent school years.
- 7) Copies of current assessment instruments and full descriptions of current assessment procedures (other than for the state assessment) shall be maintained for inspection by the State Board of Education staff upon request.
- 8) All students enrolled in at least the benchmark grades shall be administered the assessment instruments and procedures as defined in the standards for those grades, except that a student with limited English proficiency or a disability shall be assessed with an alternative assessment test or procedure if, in the judgment of the district, the uniform assessment test or procedure

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cannot be administered in a valid, reliable and nondiscriminatory manner for that student after reasonable accommodation is made for the student or if an alternative assessment is specified in the student's Individualized Education Program pursuant to 23 Ill. Adm. Code 226.562(a)(5). Records of the progress of all students on learning outcomes shall be maintained.

- 9) All assessment procedures shall be based on good testing practice, as described in "Standards for Educational and Psychological Testing" (1985) published by the American Psychological Association. (No later amendments to or editions of these standards are incorporated by this rule.)
- 10) A variety of assessment instruments and procedures that address the scope, content, and specificity of each learning outcome shall be used. Data or results from the Illinois Goal Assessment Program may be used to make student performance and school improvement decisions but the Illinois Goal Assessment Program may not be utilized to meet the assessment requirements of this Section.
- 11) All assessment practices shall be based on fair testing practice, as described in "Code of Fair Testing Practices in Education" (1988) published by the Joint Committee on Testing Practices of the American Educational Research Association, American Psychological Association and National Council on Measurement in Education. (No later amendments to or editions of this code are incorporated by this rule.)
- 12) Each district shall ensure the availability of reasonable accommodations for participation in the assessment test or procedure or alternative test or procedure by students with disabilities or limited English proficiency.
- 13) Districts shall protect the security and confidentiality of all questions and other materials which are considered part of a secured or confidential assessment test or procedure, including but not necessarily limited to test items, reading passages, charts, graphs, and tables.

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d) Requirements for the Analysis of Student Performance Data

1) There must be a systematic collection and analysis of student performance data as they become available, with emphasis on current and prior years' assessment data by standard for each learning outcome, with an indication of the percent of students assessed, including those in identified groups in the school's student population, who met the standards.

2) Current and prior years' data collected on student performance must be used in considering ways to improve student achievement and the programs of instruction at the school relative to the standards established for meeting the learning outcomes.

e) Requirements for the Evaluation of Student Performance and School Programs

1) Student achievement and the programs of instruction at the school must be evaluated at least annually to help determine whether all students are being served.

2) Inquiry is to be conducted on possible common characteristics of students at the school who consistently are not meeting standards for learning outcomes, for use in identifying groups within the school's student population whose performance will be monitored for the coming year.

3) Program evaluation must be conducted to identify probable causes for the failure of students, including those in identified groups within the student population, to meet standards for learning outcomes, if applicable.

f) Requirements for the Review of Expectations and Program Improvements

1) Expectations for students at the school must be reviewed annually based on current and prior years' student performance data.

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2) School improvement activities must be implemented based on:

A) the percentage of students who did not meet standards for the learning outcomes established for the school; and

B) other educational indicators.

g) Requirements for Reporting to the Public

1) Each school district shall develop and implement a reporting system to inform the public at least annually of the extent to which standards for achieving learning outcomes are being met and, if not, what appropriate actions are being taken. The reporting system shall provide for dissemination of this information for each school through all of the following:

A) presentations at regular school board meetings;

B) distribution to newspapers of general circulation and other news media serving the area in which the school district is located; and

C) distribution to parents of the district's pupils.

2) Interpretation of student performance data must be provided as appropriate for each of the audiences identified in subsection (1) above.

h) Determination of the Student Performance and School Improvement component of the Accreditation Status for a school

1) Pursuant to the annual School Accreditation Process, each school will receive from the State Board of Education a determination reflecting the degree to which it meets the requirements of this Section for student performance and school improvement, based on the evaluation criteria set forth in Appendix E and the scoring criteria set forth in Appendix F to this Part.

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- A) The determination will be either:
- i) Exceeds Student Performance and School Improvement Standards;
 - ii) Meets Student Performance and School Improvement Standards;
 - iii) Does Not Fully Meet Student Performance and School Improvement Standards; or
 - iv) Does Not Meet Student Performance and School Improvement Standards.
- B) No school shall be determined either to exceed or not to meet student performance and school improvement standards until it has been visited by State Board staff to verify the relevant information submitted.
- 2) Within 30 days after the issuance of the student performance and school improvement determination, the superintendent of the district may request a conference at which representatives of the district will have an opportunity to discuss the determination with representatives of the State Board of Education. If within the 30-day period the superintendent does not request a conference, the determination will become final.
- 3) If a conference is requested for a school which received a determination of Does Not Meet Student Performance and School Improvement Standards and the areas of concern are not resolved, the school board may submit an appeal of the determination by adopted board resolution. The appeal must identify the specific findings with which the district disagrees. Within 30 days after receipt of an appeal, the State Superintendent will appoint a three-member appeal panel to hear the appeal.
- 4) The district will be given an opportunity to present any information relevant to the determination issues appealed. Following the district's presentation, State Board staff may present information relevant to the district's presentation. The appeal panel will submit its

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- recommendations to the State Superintendent, who will issue a final written determination in each case.
- 5) School districts may submit amendments to the Annual Application for Accreditation to substantiate changes in the data or the data collection and validation procedures for reevaluation of their student performance and school improvement determination. Amendments shall be submitted on forms specified by the State Board.
- (Source: Amended at Ill. Reg. _____, effective January 10, 1994)
- Section 1.50 Three Types of Recognition Status State Assessment
- There are three types of recognition status: Full Recognition, Probationary Recognition, and Nonrecognition.
- a) Full Recognition is granted to a school district or attendance center which has undergone an on-site evaluation by representatives of the State Board of Education, Public School Approval Section and the respective Regional Superintendent, and
 - 1) meets the minimal standards required of all elementary and secondary schools, and
 - 2) has submitted an Annual Application for Recognition.
 - b) Probationary Recognition is given to a school district or attendance center which has not met these minimal standards. Probationary Recognition is a warning that the school district shall make certain improvements.
 - c) Nonrecognition is given to a school district or attendance center which fails to submit an Annual Application for Recognition, fails to meet legal requirements, or fails to give evidence of meeting minimal standards. A school district which fails for any school year to maintain a recognized school shall not be eligible to file, for such year, any claim upon the common school fund or collect tuition from another school district. (Section 10-8 of the School Code)

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The State Board of Education shall develop and administer assessment instruments and other procedures for all six fundamental learning areas. All students shall participate in the Illinois Goal Assessment Program (IGAP) in language arts, mathematics, science, and social sciences with the exception of students who do not participate pursuant to Section 2-3.64 of the School Code (Ill. Rev. Stat. 1991, ch. 122, par. 2-3.64). (105 ILCS 5/2-3.64). Samples of students identified by the State Board shall participate in IGAP special studies in the fine arts and physical development and health.

a) Development and Participation

- 1) Assessment instruments and procedures shall meet the generally accepted standards of validity and reliability as stated in "Standards for Educational and Psychological Testing" (1985) published by the American Psychological Association. (No later amendments to or editions of these standards are incorporated by this rule.)

2) Schools shall participate in special studies,

tryouts, pilot testing, field testing, and/or norm testing of these assessment procedures and instruments when selected to do so by the State Board.

- 3) A school shall be selected for participation in these special studies, tryouts, pilot testing, and/or field testing no more than once every five years.

- 4) All students who are required to participate under Section 2-3.64 of the School Code shall be administered the state assessment. It is the responsibility of each district to ensure that all students required to participate in the state assessment do so.

- 5) District personnel must be able to document that the performance of students who are exempt from the state assessment is being evaluated and that information about the procedures, instruments, results, and analysis is available for review.

- 6) Each district shall ensure the availability of reasonable accommodations for participation in the

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state assessment by students with disabilities and limited English proficiency.

b) Assessment Procedures

- 1) All assessment procedures and practices shall be based on fair testing practices, as described in "Code of Fair Testing Practices in Education" (1988) published by the Joint Committee on Testing Practices of the American Educational Research Association, American Psychological Association and National Council on Measurement in Education. (No later amendments to or editions of this code are incorporated by this rule.)

- 2) Districts shall protect the security and confidentiality of all assessment questions and other materials which are considered part of the approved IGAP assessment, including but not necessarily limited to test items, reading passages, charts, graphs, and tables.

c) Reports of State Assessment Results

- 1) The State Board shall send each school and district a report for the school containing the following information from the results of each IGAP assessment in language arts, mathematics, science, and social sciences:

- A) results for all students to whom the IGAP was administered;

- B) summary data for the school and/or district, the state, and the nation, including but not limited to the appropriate raw and/or scale score average(s), comparison score bands, and distributions of students whose IGAP scores exceed, meet, and fail to meet the state standards in each fundamental learning area.

- 2) The IGAP assessment results (including IGAP scores and performance standards) are for school improvement purposes. Individual or aggregate scores shall not become part of a student's permanent record or be used for grading, promotion, retention, graduation, or personnel evaluation.

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d) Each school that includes grades for which the state assessment is administered will receive from the State Board of Education an annual determination reflecting the degree to which the performance of the students at the school meets state assessment standards. This determination will be based upon all state assessment scores achieved by students in the school. Each such score will be classified as exceeding, meeting, or not meeting state assessment standards, as reflected in Appendix G to this Part. All of the school's test score classifications will form one distribution and, based on that distribution, the state assessment determination will be either:

- 1) Exceeds State Assessment Standards (at least 90% of all test scores meet state standards, and at least 50% of all test scores exceed state standards);
- 2) Meets State Assessment Standards (at least 50% of all test scores meet state standards); or
- 3) Does Not Meet State Assessment Standards (more than 50% of all test scores do not meet state standards).

e) Within 30 days after the issuance of a school's state assessment determination, the superintendent of the district may request a conference at which representatives of the district will have an opportunity to discuss the determination with representatives of the State Board of Education. If within the 30-day period the superintendent does not request a conference, the determination will become final.

- 1) If a conference is requested by a superintendent on behalf of a school which received a determination of Does Not Meet State Assessment Standards and the areas of concern are not resolved, the school board may submit an appeal of that designation by adopted board resolution. The appeal must identify the specific state assessment issues raised. Within 30 days after receipt of an appeal, the State Superintendent shall appoint a three-member appeal panel to hear the appeal.

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- 2) The district will be given an opportunity to present any information relevant to the determination issues appealed. Following the district's presentation, State Board staff may present information relevant to the district's presentation. The appeal panel will submit its recommendations to the State Superintendent, who will issue a final written determination in each case.

(Source: Amended at ___ Ill. Reg. ___, effective January 10, 1994)

Section 1.60 Reevaluation Operational Compliance

School districts assigned Probationary Recognition or Nonrecognition status may request reevaluation by the State Board of Education to substantiate corrections of the areas of noncompliance previously cited.

Each school will receive from the State Board of Education a determination reflecting the degree to which it adheres to operational compliance requirements.

- a) Operational compliance determinations are Full Compliance, Pending Compliance, Probationary Compliance, and Nonrecognition. A school is recognized if it is determined to be in Full Compliance. Pending Compliance, or Probationary Compliance. Therefore, a school may be recognized, but its Accreditation Status is not complete until the two components of its determination (student performance and school improvement and the state assessment) have also been determined.

- 1) The Full Compliance determination shall be granted to each school which meets the minimal operational requirements imposed by the State Board pursuant to Section 2-3.25 of the School Code (Ill. Rev. Stat. 1991, ch. 122, par. 2-3.25) 105 ILCS 5/2-3.251 and this Part.

- 2) The Pending Compliance determination shall be given to each school which has identified deficiencies that are in the process of being corrected during the school year.

- 3) The Probationary Compliance determination shall be given to each school which has not met these

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minimal requirements. The school district must submit a plan for the correction of the cited deficiencies.

- 4) The Nonrecognition determination shall be given to any school which fails to submit an annual Application for Accreditation, fails to meet legal requirements, or fails to give evidence of meeting minimal operational requirements.

b) Within 30 days after the issuance of an operational compliance determination, the superintendent of the district may request a conference at which representatives of the district will have an opportunity to discuss the determination with representatives of the State Board of Education. If within the 30-day period the superintendent does not request a conference, the determination shall become final.

- 1) If a conference is requested by a superintendent on behalf of a school which received a determination of Nonrecognition and the areas of concern are not resolved, the school board may submit an appeal of the determination by adopted board resolution. The appeal must identify the specific findings with which the district disagrees. Within 30 days after receipt of an appeal, the State Superintendent shall appoint a three-member appeal panel to hear the appeal.

- 2) The district will be given an opportunity to present any information relevant to the recognition determination issues appealed. Following the district's presentation, State Board staff may present information relevant to the district's presentation. The appeal panel will submit its recommendations to the State Superintendent, who will make a final recommendation to the State Board.

- c) For any school assigned Probationary Compliance or Nonrecognition status, the district may at any time request reevaluation by the State Board of Education to verify corrections made by the district as to the areas of noncompliance previously cited.

(Source: Amended at ___ Ill. Reg. ___, effective January 10, 1994)

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Section 1.70 Effective Dates of ~~Recognition Status Accreditation~~
the recognition status of all districts shall be effective from July 1 to the next succeeding June 30.

- a) The Operational Compliance determination of each school shall be effective from July 1 to the next succeeding June 30.

b) The Student Performance and School Improvement determination shall be effective upon completion of the Accreditation Process and shall remain in effect until the next Accreditation Process is completed and a new determination is made by the State Board.

- c) The state assessment determination for a school shall be effective upon completion of the state assessment process and shall remain in effect until completion of the state assessment process for the next school year.

(Source: Amended at ___ Ill. Reg. ___, effective January 10, 1994)

Section 1.80 Appeals Academic Watch List

the following procedure shall be used for all appeals concerning recognition.

- a) Level I

- 1) At the conclusion of each evaluation visit to a local school district, the educational specialist (team leader) in charge of the visit conducts a summary conference. At this point, each item that was determined to be below minimal standards, or is an area of concern, is discussed.

- 2) the superintendent of the district has the opportunity during this conference to challenge directly and through designees, any comment made by the educational specialist (team leader). If the team leader is convinced that the item should not be included in the written report, it shall be removed.

- 3) this summary conference represents the first level of the appeal process.

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b) Level II

1) ~~the educational specialist who conducts the visit writes a formal report indicating the areas of noncompliance and any time limitations for making corrections. Prior to the dissemination of the written report, the Manager of the Public School Approval Section may revise the points of concern or recommendations.~~

2) ~~the superintendent of the school district has forty-five (45) days after receiving the written report to submit a formal written reaction to listed areas of noncompliance. The local board of education or superintendent may appeal a recommendation based on documented evidence presented by the district through the Regional Superintendent.~~

c) Level III

~~The Public School Approval Recognition Committee, consisting of the Public School Approval staff, meets four times during the school year. This committee discusses and considers recommendations for recognition status of districts that have been visited. Prior to these meetings, the Regional Superintendent is notified that a particular school district in the region is going to be discussed and what the recommendation for recognition will be. The Regional Superintendent and one representative from the school district to be discussed are invited to attend. (The Regional Superintendent has the option of supporting the district, depending on the posture taken in reference to the discrepancies.) This action provides another level of appeal and provides the school district an additional element of due process. Following the committee meeting, those school districts recommended for less than Full Recognition status receive a certified letter, a copy of which is sent to the Regional Superintendent, informing that office of the recommended status.~~

d) Level IV

~~At the final meeting of the Public School Approval Recognition Committee, all school districts that were previously recommended for less than Full Recognition~~

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~~status and those visited in the last quarter are discussed. Again, Regional Superintendents are invited to attend the meeting, along with a representative of the school district. A recommendation for a lowered recognition status that is a result of the fourth quarterly conference is sent by certified mail to the district superintendent. A copy of that recommendation is sent to the Regional Superintendent.~~

e) Level V

1) ~~local school districts that wish to appeal the recommendations of the Public School Approval Recognition Committee may do so by filing a formal statement of appeal within fourteen (14) days of receipt of the letter of notification following the last quarterly meeting. The appeal notice shall be submitted to the Regional Superintendent and the Assistant Superintendent, Department of Recognition and Supervision, State Board of Education. Within seven (7) days of receipt of the appeal notice, the Assistant Superintendent, Department of Recognition will conduct a hearing and will review all the pertinent information including the procedures which led to the recommended recognition status. Local districts shall have the opportunity to present evidence that the program or service in question meets the purpose behind a given regulation.~~

2)

~~The five-member Appeals Committee shall be composed of three assistant superintendents and a member of the legal staff from the State Board of Education. The fifth member of the Appeals Committee shall be appointed by the State Superintendent of Education and will not be an employee of the State Board of Education. The chair shall be appointed by the State Superintendent.~~

3)

~~The committee's findings shall be forwarded to the State Superintendent of Education with a specific recommendation. The decision of the State Superintendent of Education, who may accept or reject the committee's recommendation, shall be a final administrative decision.~~

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- 4) ~~the school district shall be notified of the decision within fifteen (15) days of the conclusion of the hearing.~~

Schools which include grades at which the state assessment is administered that receive the determination of Do Not Meet Student Performance and School Improvement Standards and Do Not Meet State Assessment Standards as set forth in this Subpart shall be placed on an Academic Watch List pursuant to Sections 2-3.25d through 2-3.25f of the School Code. Schools which do not include grades at which the state assessment is administered that receive the determination of Do Not Meet Student Performance and School Improvement Standards as set forth in this Subpart shall be placed on an Academic Watch List pursuant to Sections 2-3.25d through 2-3.25f of the School Code.

(Source: Amended at __ Ill. Reg. ___, effective January 10, 1994.)

Section 1.90 System of Rewards and Recognition

A school which includes grades at which the state assessment is administered that is assigned and maintains a determination of Exceeds Local Student Performance and School Improvement Standards and is assigned and maintains a determination of Exceeds State Assessment Standards will be eligible to receive rewards and special recognition during the period for which such determinations are maintained. A school which does not include grades at which the state assessment is administered that is assigned and maintains a determination of Exceeds Student Performance and School Improvement Standards will be eligible to receive rewards and special recognition during the period for which such determination is maintained. Rewards will be as determined by the State Board of Education and may be:

- a) an extension of the schedule for Quality Review visits to no less than once in every seven school years;
- b) statewide recognition from the State Board;
- c) participation in programs and activities of the State Board.

(Source: Added at __ Ill. Reg. ___, effective January 10, 1994.)

Section 1.100 Waiver of Rules

- a) In order to request a waiver as authorized in Section 2-3.25g of the School Code, the school board or

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~~Independent authority representing the school must complete the waiver request form designated by the State Board and approve the submission of the request at a public board meeting. The State Superintendent will review the waiver request as to the impact of the waiver, if granted, on school improvement issues. The State Superintendent may request additional information or assurances from the district. The decision of the State Superintendent to grant or deny the waiver is final.~~

- b) A panel of persons interested in student performance and school improvement issues will review all waivers acted upon by the State Superintendent. The panel will periodically forward to the State Superintendent recommendations on the issues raised in waiver requests.

- c) A request to extend an approved waiver shall be made in the same manner and on the same form as an original waiver request and shall be approved or disapproved in the same manner as an original request.

- d) "School Improvement Issues" means those issues which arise in the course of preparing for or implementing the procedures or requirements of this Subpart.

(Source: Added at __ Ill. Reg. ___, effective January 10, 1994.)

Section 1. Appendix D State Goals for Learning

LANGUAGE ARTS

The skills and knowledge of the language arts are essential for student success in virtually all areas of the curriculum. They are also a central requirement for the development of clear expression and critical thinking. The language arts include the study of literature and the development of skills in reading, writing, speaking, and listening.

As a result of their schooling, students will be able to:

- read, comprehend, interpret, evaluate and use written material;
- listen critically and analytically;

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write standard English in a grammatical, well-organized and coherent manner for a variety of purposes;

use spoken language effectively in formal and informal situations to communicate ideas and information and to ask and answer questions;

understand the various forms of significant literature representative of different cultures, eras and ideas;

understand how and why language functions and evolves.

MATHEMATICS

Mathematics provides essential problem solving tools applicable to a range of scientific disciplines, business, and everyday situations. Mathematics is the language of quantification and logic: its elements are symbols, structures, and shapes. It enables people to understand and use facts, definitions, and symbols in a coherent and systematic way in order to reason deductively and to solve problems.

As a result of their schooling, students will be able to:

perform the computations of addition, subtraction, multiplication, and division using whole numbers, integers, fractions and decimals;

understand and use ratios and percentages;

make and use measurements, including those of area and volume;

identify, analyze and solve problems using algebraic equations, inequalities, functions and their graphs;

understand and apply geometric concepts and relations in a variety of forms;

understand and use methods of data collection and analysis, including tables, charts and comparisons;

use mathematical skills to estimate, approximate and predict outcomes and to judge reasonableness of results.

BIOLOGICAL AND PHYSICAL SCIENCES

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Science is the quest for objective truth. It provides a conceptual framework for the understanding of natural phenomena and their causes and effects. The purposes of the study of science are to develop students who are scientifically literate, recognize that science is not value-free, are capable of making ethical judgments regarding science and social issues, and understand that technological growth is an outcome of the scientific enterprise.

As a result of their schooling, students will have a working knowledge of:

the concepts and basic vocabulary of biological, physical and environmental sciences and their application to life and work in contemporary technological society;

the social and environmental implications and limitations of technological development;

the principles of scientific research and their application in simple research projects;

the processes, techniques, methods, equipment and available technology of science.

SOCIAL SCIENCES

Social sciences provide students with an understanding of themselves and of society, prepare them for citizenship in a democracy, and give them the basics for understanding the complexity of the world community. Study of the humanities, of which social sciences are a part, is necessary in order to preserve the values of human dignity, justice and representative processes. Social sciences include anthropology, economics, geography, government, history, philosophy, political science, psychology and sociology.

As a result of their schooling, students will be able to:

understand and analyze comparative political and economic systems, with an emphasis on the political and economic systems of the United States;

understand and analyze events, trends, personalities, and movements shaping the history of the world, the United States and Illinois;

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demonstrate a knowledge of the basic concepts of the social sciences and how these help to interpret human behavior;
demonstrate a knowledge of world geography with emphasis on that of the United States;
apply the skills and knowledge gained in the social sciences to decision-making in life situations.

FINE ARTS

The fine arts give students the means to express themselves creatively and to respond to the artistic expression of others.
As a record of human experience, the fine arts provide distinctive ways of understanding society, history and nature.
The study of fine arts includes visual art, music, theatre and dance.

As a result of their schooling, students will be able to:

- describe the unique characteristics of each of the arts;
- understand the principal sensory, formal, technical and expressive qualities of each of the arts;
- identify significant works in the arts from major historical periods and how they reflect societies, cultures and civilizations, past and present;
- identify processes and tools required to produce visual art, music, theatre and dance;
- demonstrate the basic skills necessary to participate in the creation and/or performance of one of the arts.

PHYSICAL DEVELOPMENT AND HEALTH

Effective human functioning depends upon optimum physical development and health. Education for physical development and health provides students with the knowledge and attitudes to achieve healthful living throughout their lives and to acquire physical fitness, coordination and leisure skills.

As a result of their schooling, students will be able to:

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understand the physical development, structure and functions of the human body;

understand principles of nutrition, exercise, efficient management of emotional stress, positive self-concept development, drug use and abuse, and the prevention and treatment of illness;

understand consumer health and safety, including environmental health;

demonstrate basic skills and physical fitness necessary to participate in a variety of conditioning exercises or leisure activities such as sports and dance;

plan a personal physical fitness and health program;

perform a variety of complex motor activities;

demonstrate a variety of basic life-saving activities.

In pursuing knowledge in these fundamental areas, students must develop an understanding of the interrelationships of knowledge; develop skills in the use of electronic and other applicable technology; and develop their ability to gather, evaluate and synthesize information from a variety of sources.

(Source: Added at ___ Ill. Reg. ___, effective January 10, 1994)

Section 1. Appendix E Evaluation Criteria - Student Performance and School Improvement Determination

Glossary of Terms

These definitions are specific to this Appendix E.

Comprehensive: All dimensions of a State Goal for Learning with regard to scope, content, specificity, skills, and type of thinking required are addressed.

Consultative: Conducted in a manner that solicits input from staff, students, parents, and community.

Diverse Assessment: Using more than one type of assessment in constructing a standard. Types selected as dimensions of a standard must not be exclusively forced choice/short answer (e.g., multiple choice).

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true/false, matching, fill in the blank, and must be appropriate to the range and depth of the content and thinking skills of a learning outcome.

Evidence: The documented information on which a judgment or conclusion may be based, establishing the likelihood or probability that a claim is credible; "compelling evidence" establishes a high likelihood or probability, removing uncertainties or doubts on the part of the evaluator.

Formal: Following a purposeful, regulated and documented pattern of activity or form.

Methods of Assessment: Instruments and procedures used to measure student performance in meeting the standards for a learning outcome. These assessments must relate to a learning outcome, identify a particular kind of evidence to be evaluated, define exercises that elicit that evidence, and describe systematic scoring procedures. Methods of assessment are classified here as either forced choice/short answer or complex generated response.

Forced choice/short answer: Students must select correct responses from a range of alternative responses provided in the assessment instrument and/or procedure or supply a word or short phrase to answer a question or complete a statement.

Complex generated response: A non-forced choice exercise in which a student provides evidence of specific knowledge or skills. The evidence might be in the form of a written essay, performance, product or other type of presentation.

Students: Those pupils whose performance is assessed in compliance with the requirements of Subpart A of this Part and this Appendix E.

Systematic: Integral to the process for implementing and monitoring improvement in school and student performance and occurring at least annually.

Assignment of Point Values for the Student Performance and School Improvement Determination

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Points will be awarded to schools based upon the evaluation criteria set forth below. The numbers in the left margin represent the range of point values which may be assigned to a school for each of the areas listed. In order for a school to receive the number of points shown, all conditions described in the corresponding scoring criterion must exist. The total score for a school will result in a student performance and school improvement determination in accordance with the criteria shown in Appendix F.

1 Analysis of Existing Conditions

1-1 Description of student population, identification of significant groups in the population relevant to learning outcomes and consideration of attendance variables

1

There is little or no evidence that demographic information is maintained on the student population of the school for the purpose of identifying significant groups in the population of learners to be monitored for performance.

2

Demographic information on the student population of the school is limited.

Gender, racial, or socio-economic groups or other groups in the student population which warrant description or emerge as a result of analysis of data are identified.

Student attendance, truancy, mobility, retention, and expulsion rates are maintained. Graduation and dropout rates are maintained for high schools. There is no evidence that these performance indicators are consulted when considering factors which may affect student learning.

3

Demographic information on the total population of the school is maintained, indicating the number and percent of students at each grade who are receiving special education services, who are receiving Chapter 1 services, who are participating in a gifted program, who are participating in a vocational program, who have limited English proficiency, and who are members of various gender, racial/ethnic, socioeconomic or other groups which warrant description or emerge as a result of analysis of demographic information.

Groups in the student population which warrant description or emerge as a result of analysis of data whose performance data will be disaggregated are identified.

A rationale is documented for the selection of identified groups within the student population.

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Student attendance, truancy, mobility, retention, and expulsion rates are maintained. Graduation and dropout rates are maintained for high schools. These performance indicators are informally consulted when considering factors which may affect student learning.

4 Demographic information on the total population of the school is maintained, indicating the number and percent of students at each grade who are receiving special education services, who are receiving Chapter 1 services, who are participating in a gifted program, who are participating in a vocational program, who have limited English proficiency, and who are members of various gender, racial/ethnic, socioeconomic or other groups which warrant description or emerge as a result of analysis of demographic information.

Groups in the student population which warrant description or emerge as a result of analysis of data whose performance data will be disaggregated are identified.

A rationale is documented for the selection of identified groups within the student population based on formal and systematic identification procedures.

Student attendance, truancy, mobility, retention, and expulsion rates are maintained. Graduation and dropout rates are maintained for high schools. These performance indicators are formally and systematically consulted when considering factors which may affect student learning.

1-2 Perceived student needs derived from staff and/or the community and community characteristics which may affect student learning

1 There is little or no evidence that inquiry is conducted on the needs of students in the school related to learning outcomes as perceived by school staff and the school community or on community characteristics which may affect student learning.

2 Evidence exists that information on the needs of students in the school related to learning outcomes as perceived by school staff and the school community is occasionally and informally elicited.

Evidence exists that informal inquiry is conducted to explain how community characteristics may affect student learning.

3 Compelling evidence exists that information on the needs of all students in the school related to learning outcomes as

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perceived by school staff and school community representatives is formally and systematically collected. Evidence exists that informal inquiry is conducted to explain how community characteristics may affect student learning; or

Evidence exists that information on the needs of all students in the school related to learning outcomes as perceived by school staff and school community representatives is occasionally and informally elicited.

Compelling evidence exists that formal inquiry is conducted to explain how community characteristics may affect student learning.

4 Compelling evidence exists that information on the needs of all students in the school related to learning outcomes as perceived by school staff and school community representatives is formally and systematically collected. Compelling evidence exists that formal inquiry is conducted to explain how community characteristics may affect student learning.

2 Learning Outcomes, Standards, and Expectations

2-1 Learning Outcomes

Learning outcomes have not been developed.

2 Comprehensive learning outcomes aligned with some State Goals for Learning exist for the school and are written in some fundamental learning areas for at least 2 grades for a 1-8 attendance center or for at least one grade for a middle school/junior high, high school or primary attendance center with fewer than 8 grades.

The process for developing learning outcomes is informal and limited in participation of school staff and in communication with students, parents and the school community.

There is some alignment of the curriculum with learning outcomes.

3 Comprehensive learning outcomes aligned with all required State Goals for Learning exist for the school and are written in all fundamental learning areas for at least 2 grades for a 1-8 attendance center or for at least one grade for a middle school/junior high, high school, or primary attendance center with fewer than eight grades.

The process for developing learning outcomes is informal and limited in participation of school staff and in

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- : communication with students, parents and the school community.
- : There is some alignment of the curriculum with learning outcomes.
- 4 Comprehensive learning outcomes aligned with all the State Goals for Learning exist for the school and are written in all fundamental learning areas for at least 2 grades for a 1-8 attendance center or for at least one grade for a middle school/junior high, high school, or primary attendance center with fewer than eight grades.
- : Learning outcomes address the content of State Goal(s) for Learning; are broader in focus than a learning objective; probe the range and depth of thinking skills appropriate to the State Goal(s) for Learning; and are amenable to assessment.
- : The process for developing learning outcomes includes a systematic review cycle and includes participation of school staff and communication with students, parents, and the school community in the deliberative process. Both the rationale for this process and the rationale for the resulting learning outcomes are evident.
- : There is formal and systematic alignment of the curriculum with learning outcomes.
- 5 Comprehensive learning outcomes aligned with all State Goals for Learning exist for the school and are written in all fundamental learning areas for at least 50% of the grades at the attendance center.
- : Learning outcomes address the content of State Goal(s) for Learning; are broader in focus than a learning objective; probe the range and depth of thinking skills appropriate to the State Goal(s) for Learning; and are amenable to assessment. Some learning outcomes integrate fundamental learning areas when appropriate and reflect problems and tasks outside the classroom.
- : The process for developing learning outcomes includes a systematic review cycle and includes participation of school staff and communication with students, parents, and the school community in the deliberative process. Both the rationale for this process and the rationale for the resulting learning outcomes are evident.
- : There is formal and systematic alignment of the curriculum with learning outcomes.
- 6 For elementary, middle schools and junior high schools, comprehensive learning outcomes aligned with all State Goals

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- : for Learning are written in all fundamental learning areas for all grades.
- : For high schools, learning outcomes aligned with the State Goals for Learning are written in all fundamental learning areas. There is comprehensive coverage of all State Goals for Learning in all fundamental learning areas throughout the scope of the high school program.
- : Learning outcomes address the content of State Goal(s) for Learning; are broader in focus than a learning objective; probe the range and depth of thinking skills appropriate to the State Goal(s) for Learning; and are amenable to assessment. Learning outcomes integrate fundamental learning areas when appropriate and reflect problems and tasks outside the classroom.
- : The process for developing learning outcomes includes a systematic review cycle and includes participation of school staff and communication with students, parents, and the school community in the deliberative process. Both the rationale for this process and the rationale for the resulting learning outcomes are evident.
- : There is formal and systematic alignment of the curriculum with learning outcomes.
- 2-2 Standards
- 1 Standards for the school do not exist for learning outcomes.
- 2 Standards for the school exist for some learning outcomes and are stated in a manner which demarcates whether a student is to be included in the expectation group, i.e., the percentage of students who are expected to achieve the learning outcome.
- 3 Standards for the school exist for all learning outcomes and are written as a cut-score on a single assessment instrument or procedure, or on items from a single assessment instrument or procedure.
- : Points awarded for learning outcomes (2-1) are three (3) or more.
- : There is a formal and consultative process for setting standards. Both the rationale for this process and the rationale for the standards are evident.
- 4 Standards exist for the school for all learning outcomes in all fundamental learning areas and are written as cut-scores or minimum criteria on a variety of assessment instruments or procedures that address the scope, content, and specificity of the learning outcome.

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Points awarded for learning outcomes (2-1) are four (4). There is a formal, consultative process for the school for setting standards. Both a rationale for this process which includes consultation of previous performance data and a rationale for the standards are evident.

Standards exist for the school for all learning outcomes in all fundamental learning areas and are written as cut-scores or minimum criteria on a variety of assessment instruments or procedures that address the scope, content, and specificity of the learning outcome. Points awarded for learning outcomes (2-1) are five (5). There is a formal, consultative process for the school for setting standards. Both a rationale for this process which includes consultation of previous performance data and a rationale for the standards are evident.

Standards exist for the school for all learning outcomes in all fundamental learning areas and are written as cut-scores or minimum criteria on a variety of assessment instruments or procedures that address the scope, content, and specificity of the learning outcome.

Points awarded for learning outcomes (2-1) are six (6). There is a formal, consultative process for the school for setting standards. Both a rationale for this process which includes consultation of previous performance data and a rationale for the standards are evident.

2-3 Expectations

Expectations have not been established for the school.

Expectations exist for the school for learning outcomes in some fundamental learning areas in the form of the percent of students expected to achieve learning outcomes.

Points awarded for standards (2-2) are two (2) or more.

Expectations exist for the school for each learning outcome in each fundamental learning area in the form of the percent of students expected to meet the standard for that learning outcome.

Points awarded for standards (2-2) are three (3) or more.

There is a process for the school for establishing expectations and a rationale for this process.

Expectations exist for the school for each learning outcome in each fundamental learning area in the form of the percent

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of students expected to meet the standard for that learning outcome.

Points awarded for standards (2-2) are four (4) or more. There is a formal, systematic, and consultative process for the school for establishing expectations and a rationale for this process.

3 Assessment Systems

3-1 Coordination of assessment instruments and procedures with learning outcomes

Learning outcomes for the school are not assessed by assessment instruments and procedures.

Some learning outcomes for the school in all required fundamental learning areas are assessed by assessment instruments and procedures administered at least at benchmark grades.

Points awarded for standards (2-2) are two (2) or more.

Learning outcomes for the school for all fundamental learning areas are assessed by a variety of assessment instruments and procedures that address the scope, content, and specificity of the learning outcome and are administered to students at least at benchmark grades.

Points awarded for standards (2-2) are four (4) or more.

The rationale for choosing or developing each instrument or procedure for the school is evident.

All learning outcomes for the school in all fundamental learning areas are assessed by a variety of assessment instruments and procedures that address the scope, content, and specificity of the learning outcome.

Assessment instruments and procedures are clearly diverse in type for all standards for learning outcomes.

Points awarded for standards (2-2) are five (5) or more.

The rationale for choosing or developing each instrument or procedure is evident.

3-2 Validity of Assessment Instruments and Procedures

There is little or no evidence that assessment instruments and procedures used to measure student achievement for learning outcomes will produce student performance results which are valid measures of the learning outcomes.

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- 2 Claims for content validity are documented for all instruments and procedures used to measure student achievement and learning outcomes for the school.
- : There is evidence that there are instruments and procedures sufficient to measure all learning outcomes; and
- : that assessment instruments and procedures measure knowledge and skills beyond specific tasks or questions to provide accurate information for making judgments about the progress of students toward achieving learning outcomes.

- 3 Claims for content validity are documented for all instruments and procedures used to measure student achievement of learning outcomes for the school.
- : There is compelling evidence that there are instruments and procedures sufficient to measure all learning outcomes; and
- : that assessment instruments and procedures measure knowledge and skills beyond specific tasks or questions to provide accurate information for making judgments about the progress of students toward achieving learning outcomes.

3-3 Reliability of assessment instruments and procedures

- 1 Reliability claims are documented for assessment instruments and procedures used to set standards for achievement of all learning outcomes for the school for some but not all assessment instruments and procedures.
- : There is no evidence that these instruments and procedures are administered, scored, and interpreted in a uniform manner.

- 2 Reliability claims are documented for assessment instruments and procedures used to set standards for achievement of all learning outcomes for the school in all required fundamental learning areas.
- : Evidence is provided that these instruments and procedures are administered, scored, and interpreted in a uniform manner.

- 3 Reliability claims are documented for assessment instruments and procedures used to set standards for achievement of all learning outcomes for the school in all fundamental learning areas.
- : Formal procedures are documented for the administration, scoring, and interpretation of all assessment instruments and procedures in a uniform manner.

3-4 Nondiscriminatory assessment instruments and procedures

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- 1 There is no evidence that steps have been taken to ensure that instruments and procedures used to set standards for learning outcomes for the school are nondiscriminatory regarding race/ethnic or gender differences or student disabilities.

- 2 Evidence is provided in the claims for nondiscrimination regarding race/ethnic and gender differences and student disabilities for all assessment instruments and procedures used to set standards for achievement of learning outcomes.

4 Analysis of Student Performance Data

4-1 Data sufficiency for decision-making

- 1 Data for the school are insufficient to make decisions regarding student progress for each learning outcome.
- 2 Limited data are available for the school for the most recent academic year that are based on results from valid, reliable, and nondiscriminatory assessment instruments and procedures and that are used to make decisions regarding student performance relative to learning outcomes, including data for any groups in the student population identified for disaggregate data analysis.
- : These data for the school are used to establish current and prior years' student performance in all fundamental learning areas.

- 3 Data available for the school for the most recent academic year are based on results from a variety of valid, reliable, and nondiscriminatory assessment instruments and procedures and are used to make decisions regarding student performance relative to each learning outcome.

- : The data set for the school is sufficient in its description of student performance on each assessment dimension of a standard, is sufficient in its description of student performance in meeting the standard for each learning outcome, and includes data for groups in the student population identified for disaggregate data analysis for the most recent academic year.
- : All students in the school at least in the benchmark grades or in the instructional group are accounted for.
- : Current and prior years' student performance data relative to each learning outcome have been established.

4-2 Compilation and analysis of assessment data

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1 There is little or no systematic collection, comparison or weighting of assessment data for the school, nor is there an indication of the percent of students who met standards for learning outcomes for fundamental learning areas.

2 There is systematic collection, comparison and weighting of assessment data for the school with an indication of the percent of students who met standards for some but not all learning outcomes for all fundamental learning areas.
Points awarded for standards (2-2) are two (2) or more.

3 There is systematic collection, comparison and weighting of assessment data for the school with an indication of the percent of students who met standards for all learning outcomes for all fundamental learning areas.
Points awarded for standards (2-2) are four (4) or more.
A process for identifying strengths and weaknesses of student performance relative to all learning outcomes for the total population and for groups identified for data disaggregation is evident.

4 There is systematic collection, comparison and weighting of assessment data for the school with an indication of the percent of students who met standards for all learning outcomes in all fundamental learning areas.
Points awarded for standards (2-2) are four (4) or more.
A formal process for identifying strengths and weaknesses of student performance relative to all learning outcomes for the total population of the school and for groups identified for data disaggregation is evident.

5 Evaluation of Student Performance and School Programs

5-1 Evaluation of student performance by standard

1 There is little or no evidence that student performance in meeting standards for learning outcomes is improving over time in the fundamental learning areas.

2* There is evidence that improvement in student performance in meeting standards for learning outcomes has occurred over time in some fundamental learning areas.
Points awarded for standards (2-2) are two (2) or more.

3* There is evidence that improvement in student performance in meeting standards for learning outcomes has occurred over time in each fundamental learning area for the student

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population and for groups in the student population identified for disaggregate data analysis.

Points awarded for standards (2-2) are three (3) or more.
Points awarded for data sufficiency (4-1) are two (2) or more.

4* There is evidence that improvement in student performance in meeting standards for learning outcomes has occurred over time in each fundamental learning area for the student population and for groups in the student population identified for disaggregate data analysis.
Points awarded for standards (2-2) are four (4) or more.
Points awarded for data sufficiency (4-1) are three (3).

5* There is compelling evidence that improvement in student performance in meeting standards for learning outcomes has occurred over time in each fundamental learning area for the student population and for groups in the student population identified for disaggregate data analysis.
Student performance in meeting standards for learning outcomes has been maintained relative to those standards for learning outcomes where improvement was not evidenced.
Points awarded for standards (2-2) are five (5) or more.
Points awarded for data sufficiency (4-1) are three (3).

6* There is compelling evidence that improvement in student performance in meeting standards for learning outcomes has occurred over time for a majority of learning outcomes in each fundamental learning area for the student population and for groups in the student population identified for disaggregate data analysis.

Student performance in meeting standards for learning outcomes has been maintained relative to those standards for learning outcomes where improvement was not evidenced.
Points awarded for standards (2-2) are five (5) or more.
Points awarded for data sufficiency (4-1) are three (3).

Point values 2 through 6 will be doubled in calculating the total points for a school.

5-2 Program evaluation

1 There is little or no evidence of program evaluation for the school based on student performance on learning outcomes.

2 Evidence exists that there is program evaluation for the school that identifies probable causes for students' failure to meet standards for learning outcomes (if applicable).

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- : There is no evidence of formal program evaluation that identifies probable causes for the failure of students, in groups identified for disaggregate data analysis, to meet standards for learning outcomes (if applicable).
- 3 Evidence exists that there is formal program evaluation for the school that identifies probable causes for students' failure to meet standards for learning outcomes (if applicable).
- : Evidence exists that there is formal program evaluation for the school that identifies probable causes for the failure of students, in groups identified for disaggregate data analysis, to meet standards for learning outcomes (if applicable).
- 4 Compelling evidence exists that there is formal program evaluation for the school that identifies probable causes for students' failure to meet standards for learning outcomes (if applicable).
- : Compelling evidence exists that there is formal program evaluation that identifies probable causes for the failure of students, in groups identified for disaggregate data analysis, to meet standards for learning outcomes (if applicable).
- : Consideration is given to proposals for what can be done differently to better identify probable causes for students' failure to meet standards for learning outcomes.
- 6 Review of Expectations and Implementation of Activities to Increase Student Performance
 - 6-1 Annual review of expectations
- 1 Expectations which exist for the school are not subject to annual review.
- 2 Expectations which exist for the school are subject to annual review and revision, if warranted based on student performance data and data trends for the school.
- 3 Expectations which exist for the school are subject to review/revision through a systematic, formal, and consultative process utilizing student performance data and data trends for the school.
- 6-2 Activities planned to increase student performance to meet new or existing expectations and consideration of changes in demographics or instruction in establishing expectations

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- 1 There is little or no evidence that changes in curriculum, instruction, staff development, organizational structure, etc., for the school will be implemented in order to improve the achievement of students in meeting standards for learning outcomes or to effect other improvements in student learning at the school.
- : There is little or no evidence of planned strategies for improving the performance of students in the school who have not met standards for learning outcomes for the school.
- : There is little or no evidence of planned strategies for improving student attendance, truancy, graduation rates, or the climate of the school to enhance instructional efforts.
- 2 There is evidence that changes in curriculum, instruction, staff development, organizational structure, etc., will be implemented for the school in order to improve the achievement of students in meeting standards for learning outcomes or to effect other improvements in student learning at the school.
- : These changes are not systematic and are not directed by student performance data for the school.
- : There are no formally planned strategies for improving the performance of students who have not met standards for learning outcomes for the school.
- : Informal consideration is given to possible changes in demographics and instruction.
- : There is evidence of planned strategies for improving student attendance, truancy, graduation rates, or the climate of the school to enhance instructional efforts.
- 3 There is compelling evidence that changes in curriculum, instruction, staff development, organizational structure, etc., for the school will be implemented in order to improve the achievement of students in meeting standards for learning outcomes or to effect other improvements in student learning at the school.
- : These changes are not systematic but are developed with consultation of student performance data for the school.
- : There are planned strategies for improving the performance of students who have not met standards for learning outcomes for the school.
- : Informal consideration is given to possible changes in demographics and instruction.
- : There is evidence of planned strategies for improving student attendance, truancy, graduation rates, or the climate of the school to enhance instructional efforts.

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- 4 There is compelling evidence that changes in curriculum, instruction, staff development, organizational structure, etc., for the school will be implemented in order to improve the achievement of students in meeting standards for learning outcomes or to effect other improvements in student learning at the school.
- : These changes are systematic and are directed by student performance data for the school.
 - : There are formal, planned strategies for improving the performance of students who have not met standards for learning outcomes for the school.
 - : Formal consideration is given to possible changes in demographics and instruction.
 - : There is compelling evidence of formal, planned strategies for improving student attendance, truancy, graduation rates, or the climate of the school to enhance instructional efforts.

7 Reporting to the Public

- 7-1 Regular communication is conducted with the school board, parents of students, and local media on student progress towards meeting the standards for achieving learning outcomes.
- 1 There is no evidence of regular communication with the school board, parents of students, and local media on student progress towards meeting the standards for achieving learning outcomes.
- 2 Information describing how students of the school are being served and how well they are achieving relative to standards for learning outcomes is available.
- : Some audiences are addressed; partial information is presented in some communication formats.
 - : There is no evidence that procedures are in place to help audiences to understand the information provided.
- 3 Information describing how students of the school are being served and how well they are achieving relative to standards for learning outcomes is available.
- : All audiences are addressed and timetables are established for releasing information to audiences.
 - : People are identified to provide information on student progress toward meeting standards for achieving learning outcomes.
 - : Information is complete in all communication formats.

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- : There is evidence that limited procedures are in place to help audiences to understand the information provided.
- 4 Information describing how students of the school are being served and how well they are achieving relative to standards for learning outcomes is available.
- : All audiences are addressed and timetables are established for releasing information to audiences.
 - : Information is complete in all reporting formats for various publics.
 - : Systematic procedures are in place to assist the audiences interpret and understand the information provided.
 - : Appropriate training is provided for those people responsible for providing information on student progress in meeting standards for learning outcomes.

(Source: Added at Ill. Reg. _____, effective January 10, 1994.)

Section 1. Appendix F Criteria for Determination - Student Performance and School Improvement

The points awarded to a school pursuant to the criteria specified in Appendix F to this Part will be totaled to arrive at the school's score. This total score will correspond to the school's student performance and school improvement determination, as set forth below.

Prior to October 1, 1995, the following point ranges will apply.

Does Not Meet Student Performance and School Improvement Standards	16 - 26
Does Not Fully Meet Student Performance and School Improvement Standards	27 - 31
Meets Student Performance and School Improvement Standards	32 - 64
Exceeds Student Performance and School Improvement Standards	65 - 70

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Beginning on October 1, 1995, the following point ranges will apply.

Does Not Meet Student Performance and School Improvement Standards	16 - 40
Does Not Fully Meet Student Performance and School Improvement Standards	41 - 49
Meets Student Performance and School Improvement Standards	50 - 64
Exceeds Student Performance and School Improvement Standards	65 - 70

(Source: Added at ___ Ill. Reg. ___, effective January 10, 1994.)

Section 1. Appendix G Criteria for Determination - State Assessment

Score Ranges for Reading by Grade

	Does Not Meet State Standards	Meets State Standards	Exceeds State Standards
Grade 3	0 - 176	177 - 337	338 - 500
Grade 6	0 - 188	189 - 337	338 - 500
Grade 8	0 - 185	186 - 325	326 - 500
Grade 10	0 - 177	178 - 313	314 - 500

Score Ranges for Writing by Grade

	Does Not Meet State Standards	Meets State Standards	Exceeds State Standards
Grade 3	6 - 14	15 - 21	22 - 32
Grade 6	6 - 17	18 - 23	24 - 32
Grade 8	6 - 20	21 - 26	27 - 32
Grade 10	6 - 25	26 - 29	30 - 32

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Score Ranges for Mathematics by Grade

	Does Not Meet State Standards	Meets State Standards	Exceeds State Standards
Grade 3	0 - 153	154 - 349	350 - 500
Grade 6	0 - 165	166 - 347	348 - 500
Grade 8	0 - 176	177 - 351	352 - 500
Grade 10	0 - 176	177 - 322	323 - 500

Score Ranges for Social Sciences by Grade

	Does Not Meet State Standards	Meets State Standards	Exceeds State Standards
Grade 4	0 - 157	158 - 305	306 - 500
Grade 7	0 - 135	136 - 295	296 - 500
Grade 11	0 - 121	122 - 321	322 - 500

Score Ranges for Science by Grade

	Does Not Meet State Standards	Meets State Standards	Exceeds State Standards
Grade 4	0 - 123	124 - 286	287 - 500
Grade 7	0 - 161	162 - 295	296 - 500
Grade 11	0 - 185	186 - 326	327 - 500

(Source: Added at ___ Ill. Reg. ___, effective January 10, 1994.)

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1) Heading of the Part: Review of Emergency Rulemaking

2) Code Citation: 1 Ill Adm Code 230

<u>Section Numbers:</u>	<u>Adopted Action</u>
230.100	Amended
230.200	Amended
230.300	Amended
230.350	Amended
230.375	Amended
230.400	Amended
230.550	Amended
230.600	Amended
230.700	Amended
230.800	Amended
230.900	Amended
230.1000	Amended
230.Exhibit A	Amended
230.Exhibit B	Repealed
230.Exhibit C	Amended
230.Exhibit D	Amended
230.Exhibit E	Amended
230.Exhibit F	Amended

4) Statutory Authority: Implementing Sections 5-45 and 5-120 and authorized by Section 5-135 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1991, ch. 127, pars. 1005-45, 1005-120 and 1005-135 [5 ILCS 100/5-45, 5-120 and 5-135].

5) Effective Date of Amendments: January 13, 1994

6) Does this rulemaking contain an automatic repeal date? No

7) Do these Amendments contain incorporations by reference? No

8) Date Filed in Agency's Principal Office: January 13, 1994

9) Notice of Proposal Published in Illinois Register: August 13, 1993

10) Has JCAR issued a Statement of Objections to these Adopted Amendments? No

11) Differences between proposal and final version: Amendments to update IAPA citations have been made.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes

13) Will these Amendments replace Emergency Amendments currently in

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effect? No

14) Are there any Amendments pending on this Part? No

15) Summary and Purpose of Amendments: This rulemaking makes editorial revisions in the Committee's policies regarding emergency rulemaking review. It makes changes in text to mirror changes in the IAPA made by PA 87-823, effective 7/1/92. Citations to the Illinois Compiled Statutes are added. Allows agencies to submit a rulemaking of a later date than currently required for that rulemaking to be placed on the next JCAR agenda. Clarifies that an agency can repeal or modify an emergency rule in response to JCAR action via emergency rulemaking.

16) Information and questions regarding these Adopted Amendments shall be directed to:

Name: Kelly Williams
Address: 700 Stratton Office Building
Springfield, Illinois 62706
Telephone: (217)785-2254

The full text of the Adopted Amendments begins on the next page:

JOINT COMMITTEE ON ADMINISTRATIVE RULES

NOTICE OF ADOPTED AMENDMENT(S)

TITLE 1: RULES AND RULEMAKING

CHAPTER II: JOINT COMMITTEE ON ADMINISTRATIVE RULES

PART 230

REVIEW OF EMERGENCY RULEMAKING

Section

- 230.1 Basic Policy (Renumbered)
- 230.2 Definition (Renumbered)
- 230.3 Staff Review (Renumbered)
- 230.4 Primary Criteria for Review (Renumbered)
- 230.5 Secondary Criteria for Review (Renumbered)
- 230.6 Objection (Renumbered)
- 230.7 Certification of Objection; Statement of Specific Objections (Renumbered)
- 230.8 Response to Objection: Format (Renumbered)
- 230.9 Response to Objection: Manner (Renumbered)
- 230.10 Failure to Respond (Renumbered)
- 230.100 Basic Policy
- 230.200 Definitions
- 230.250 State Mandates Act Requirements
- 230.300 Staff Review
- 230.350 Staff Report
- 230.375 Joint Committee Hearing
- 230.400 Criteria for Review
- 230.500 Secondary Criteria for Review (Repealed)
- 230.550 Suspension Criteria
- 230.600 Objection; Recommendation; Suspension
- 230.700 Failure to Object or Issue Recommendation
- 230.800 Agency Response to Objection
- 230.900 Agency Response to Recommendation
- 230.1000 Analysis of Agency Response
- 230.1100 Certification of Suspension; Statement of Specific Objections (Repealed)
- EXHIBIT A Certification of Objection to Emergency or Peremptory Rules
- EXHIBIT B Certification of Recommendation to Emergency or Peremptory Rules (Repealed)
- EXHIBIT C Certification of Suspension of Emergency or Peremptory Rules
- EXHIBIT D Agency Response to Joint Committee Objection to Emergency or Peremptory Rules
- EXHIBIT E Agency Response to Joint Committee Recommendation to Emergency or Peremptory Rules
- EXHIBIT F Certification of Withdrawal of Pitting-Prohibition Suspension of Emergency or Peremptory Rulemaking Rules

AUTHORITY: Implementing Sections 5-45 and 5-120 and authorized by Section 5-135 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1991, ch. 127, pars. 1005-120 and 1005-135) [5 ILCS 100/5-45, 5-120 and 5-135].

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SOURCE: Adopted at 3 Ill. Reg. 49, p. 230, effective December 10, 1979; rules repealed, new rules adopted and codified at 4 Ill. Reg. 49, p. 166, effective December 1, 1980; amended at 5 Ill. Reg. 5164, effective May 15, 1981; amended at 9 Ill. Reg. 20691, effective January 1, 1986; amended at 10 Ill. Reg. 21717, effective May 1, 1987; amended at 18 Ill. Reg. _____, effective January 13, 1994.

Section 230.100 Basic Policy

- a) The fact that situations occur in which agencies must take prompt action to adopt rules is recognized by the Joint Committee on Administrative Rules (Joint Committee) and the Illinois Administrative Procedure Act (Act) [Ill. Rev. Stat. 1991, ch. 127, par. 1001-1 et seq.] [5 ILCS 100]. In some of these instances, emergency rules must be adopted under the process provided for this purpose by Section 5-45 of the Act. However, the Joint Committee believes that public notice and comment is an essential part of the rulemaking process, which should only be by-passed for very serious reasons. The use of the emergency rulemaking process must be limited to situations when that reasonably constitute a threat to the public interest, safety or welfare, and when that require the adoption of rules upon fewer days, notice than is required by Section 5-40 of the Illinois Administrative Procedure Act (Act);--1117-Rev-Stat--1985--ch--127--par--1005-411.
- b) The Joint Committee is empowered by Section 5-120 of the Act to examine any rule. The Joint Committee will review each rule adopted through the use of emergency rulemaking under this power. The purpose of this review is to ensure that the use of the process is limited only to those situations which that meet the requirements of Section 5-45 of the Act. The criteria which-are used in this review are stated in Sections 230.400 and 230.550 of this Part.

(Source: Amended at 18 Ill. Reg. _____, effective January 13, 1994)

Section 230.200 Definitions

- a) The terms and definitions found in 1 Ill. Adm. Code 210.100 are incorporated into this Part.
- b) "Emergency rule" means a rule adopted pursuant to the rulemaking process provided in Section 5-45 of the Act.
- c) "Emergency rulemaking" means the process of adopting a rule as provided in Section 5-45 of the Act.

(Source: Amended at 18 Ill. Reg. _____, effective January 13, 1994)

Section 230.300 Staff Review

The Joint Committee staff will review each emergency rule and rulemaking.

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including both the notice and the text of the rule and rulemaking. This review will be based on the criteria in Sections 230.4007 and 230.550 of this Part. The Joint Committee staff may raise questions or problems as a result of its review and will discuss these questions or problems with the agency.

(Source: Amended at 18 Ill. Reg. _____, effective January 13, 1994.)

Section 230.350 Staff Report

The staff will report the results of its review of emergency rules and rulemakings to the Joint Committee at the next monthly Joint Committee meeting, provided there are at least 90 20 days between the publication of the ~~rulemaking~~ emergency rule and the meeting. If there are ~~less~~ fewer than 90 20 days, the rulemaking ~~staff~~ may be scheduled for the following meeting. Staff may develop ~~recommendations~~ proposals for consideration by the Joint Committee. Staff ~~recommendations~~ proposals are advisory only and ~~staff~~ do not limit the Joint Committee's power to take some other action. The staff will attempt to inform the agency of the substance of the ~~recommendations~~ proposals prior to the Joint Committee's consideration of the emergency rule or rulemaking at a public hearing.

(Source: Amended at 18 Ill. Reg. _____, effective January 13, 1994.)

Section 230.375 Joint Committee Hearing

a) The Joint Committee will hold full and open hearings on emergency rules and rulemakings. The agenda for such hearings will be submitted for publication in the Illinois Register prior to the hearing. Items not included in the published agenda may also be considered by the Joint Committee. Joint Committee staff and agency representatives will be allowed to testify at such hearings. Written comments from members of the public will be considered in lieu of oral testimony. Written comments should be submitted to the attention of the Executive Director of the Joint Committee at the following address:

Joint Committee on Administrative Rules
509-South-Sixth-Street-Room-500 700 Stratton Building
Springfield, Illinois 62701 62706

b) Comments should be received at least 10 working days prior to the hearing in order to insure their consideration. If requested by the agency, the Joint Committee will provide a copy of such comments to the agency, unless the person or group requests that a copy of the comments not be provided, or unless the comments were provided as part of the complaint review process (1 Ill. Adm. Code 260) and disclosure was not authorized by the complainant.

(Source: Amended at 18 Ill. Reg. _____, effective January 13, 1994.)

JOINT COMMITTEE ON ADMINISTRATIVE RULES

NOTICE OF ADOPTED AMENDMENT(S)

Section 230.400 Criteria for Review

a) The Joint Committee will ~~first~~ consider the following criteria in its review of emergency rules and rulemakings:

1) Emergency

A1) Does a situation exist ~~which~~ that reasonably constitutes a threat to the public interest, safety or welfare and ~~which~~ that requires adoption of the rule upon fewer days' notice than is required by Section 5-40 of the Act?

B2) Has the agency stated clearly and completely, in writing, its reasons for finding that such a situation exists?

C3) Has the emergency situation arisen through no fault of the agency?

D4) Is the emergency rule limited to those matters ~~which~~ that are required to meet the emergency situation?

E5) Has the agency taken steps to make the emergency rule known to those persons who may be affected by it? Has the agency stated those steps in writing?

F6) Has the agency ~~not~~ adopted the same emergency rule, or an emergency rule having substantially the same purpose and effect, in the past 24 months? (This provision does not apply to additions to or deletions from the Department of Public Aid's Drug Manual, which are exempt from this limitation pursuant to Section 5-45 of the Act.)

G7) Does the agency have legal authority for each ~~Part~~ portion of the emergency rule?

H8) Does each ~~Part~~ portion of the emergency rule comply with the statutory authority and legislative intent upon which it is based, or which it is implementing or interpreting?

I9) Does the agency have rulemaking authority?
~~If--the--agency--does--not--propose--rulemaking--to--implement--the--emergency--rule--pursuant--to--Section--5-01--of--the--Act--in--the--same--issue--within--90--days--of--the--Illinois--Register--in--which--the--emergency--rule--appears--the--Joint--Committee--will--also--consider--the--following--criteria--in--its--review--of--the--emergency--rule--and--rulemaking:~~

2) Substantive

A) Does each ~~Part~~ portion of the emergency rule ~~and--rulemaking~~ comply with ~~state~~ State and federal constitutions, state and federal law, and case law?

B) Does each ~~Part~~ portion of the emergency rule ~~and--rulemaking~~ include standards for the exercise of discretionary authority? Are the standards defined as clearly as practicable under the conditions?

3) Propriety

A) Is there an adequate justification and rationale for the emergency rules and rulemaking and for any regulation of the public embodied in the rules?

B) Has the agency considered the economic effects of the rules upon those regulated, including small businesses, ~~not for~~

JOINT COMMITTEE ON ADMINISTRATIVE RULES

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- profit corporations and units of local government, school districts, and community college districts?
- C) Has the agency considered less costly alternatives to these emergency rules?
- D) Has the agency considered the budgetary effects of the emergency rules upon itself, other state State agencies, and state State revenue in general?
- E) Is the language of the emergency rules simple and clear, so that the rules can be understood by the persons and groups which they will affect?
- F) Are the emergency rules free of serious technical errors, redundancies and grammatical or typographical errors, which that would affect the meaning of the rules?

43) Procedural

- A) Does the emergency rulemaking comply with the requirements of the Administrative Code Division (1 Ill. Adm. Code 100)?
- B) Do the emergency rules and rulemaking comply with any additional requirements which have been imposed on the agency by state State or federal law?
- C) Do the emergency rules and rulemaking comply with the agency's own rules for the promulgation of rules?
- be) If the Joint Committee determines that one or more of the criteria enumerated in this Section are not met, the Committee shall issue an objection or recommendation pursuant to Section 230.600(a) or (b) of this Part.

(Source: Amended at 18 Ill. Reg. _____, effective January 13, 1994)

Section 230.550 Suspension Criteria

- a) If the Joint Committee finds that the emergency rule or rulemaking does not meet one or more of the criteria in Section 230.400, the Joint Committee will then consider the emergency rule and rulemaking in relation to the following criteria pursuant to Section 5-125 of the Act:

- 1) Does the emergency rule represent a serious threat to the public interest?
 - A) Does the emergency rule contain policies which that have been previously considered and rejected by the General Assembly?
 - B) Does the emergency rule unconstitutionally or unlawfully discriminate against any citizen of this state State?
 - C) Does the emergency rule unconstitutionally or unlawfully inhibit the free exercise of the rights of any citizen of the state State?
- 2) Does the emergency rule represent a serious threat to the public safety?
 - A) Could the emergency rule result in a decrease in the

JOINT COMMITTEE ON ADMINISTRATIVE RULES

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protection provided against threats to the safety of any citizen of the state State?

B) Could the emergency rule result in an increase in the threat of physical harm to any citizen of the state State?

3) Does the emergency rule represent a serious threat to the public welfare?

- A) Does the emergency rule impose unreasonable or unnecessary economic costs on any citizen of the state State?
- B) Does the emergency rule adversely affect the health or well-being of any citizen of the state State?
- C) Does the emergency rule adversely affect the quality of life of any citizen of the state State?
- b) If the Joint Committee determines that one or more of the criteria enumerated in this Section are met, the Joint Committee shall suspend the emergency rule or portion thereof pursuant to Section 230.600(c) of this Part.

(Source: Amended at 18 Ill. Reg. _____, effective January 13, 1994)

Section 230.600 Objection; Recommendation; Suspension

a) Objection

- 1) If the Joint Committee finds that the emergency rule or rulemaking does not meet one or more of the criteria in Section 230.400 of this Part, the Joint Committee shall object to the rulemaking pursuant to Section 5-120 of the Act.
- 2) If the Joint Committee objects to the emergency rule or rulemaking, it shall certify that fact to the agency. Such certification will be sent to the agency in the form shown in Exhibit A of this Part within 5 working days after the Joint Committee hearing. The certification shall include a statement of the specific objection of the Joint Committee to the emergency rulemaking.
- 3) Each statement of specific objection shall also be submitted to the Administrative Code Division for publication in the next available issue of the Illinois Register.

b) Recommendation

- 1) If the Joint Committee finds that the emergency rule or rulemaking is incomplete or inconsistent, or does not meet one or more of the criteria in Section 230.400 of this Part, the Joint Committee shall recommend further action. Recommended actions include additional rulemaking or the introduction of legislation by the agency or the Joint Committee.
- 2) If the Joint Committee issues a recommendation to the emergency rule or rulemaking, it shall certify that fact to so notify the agency. Such certification will be sent to the agency in the form shown in Exhibit B of this Part within 5 working days after the Joint Committee hearing. The certification notification

JOINT COMMITTEE ON ADMINISTRATIVE RULES

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shall include a statement of the specific recommendation of the Joint Committee to the emergency rulemaking.

- 3) Each statement of specific recommendations shall also be submitted to the Administrative Code Division for publication in the next available issue of the Illinois Register.

c) Suspension

1) If the Joint Committee finds that the emergency rule or rulemaking, or portion thereof, is objectionable under one or more of the criteria in Section 230.400 of this Part, and that the rulemaking rule meets any of the criteria in Section 230.550 of this Part, the Joint Committee shall suspend the rule et rulemaking or portion thereof pursuant to Section 5-125 of the Act. Such action can only be taken upon the affirmative vote of three-fifths of the members appointed to the Joint Committee.

2) If the Joint Committee suspends the emergency rule et rulemaking or portion thereof, it shall certify that fact to the agency and the Administrative Code Division. Such certification will be sent to the agency and the Administrative Code Division in the form shown in Exhibit C of this Part within 5 working days after the Joint Committee hearing. The certification shall include a statement of the reasons for the Joint Committee's suspension of the emergency rule et rulemaking or portion thereof.

3) Each statement of suspension shall also be submitted to the Administrative Code Division for publication in the next available issue of the Illinois Register.

4) The effectiveness of the emergency rule et rulemaking or portion thereof shall be suspended immediately for at least 180 days upon receipt of the certified statement by the Administrative Code Division. The suspension shall be indicated prominently and clearly on the face of the emergency rule or portion thereof by the Administrative Code Division. An emergency rule or portion thereof which that is suspended cannot be enforced, or invoked for any reason, by the Agency. (Ill. Rev. Stat. 1991, ch. 127, par. 1005-125(b)) [5 ILCS 100/5-125(b)]

5) The Joint Committee shall introduce a joint resolution in either house of the General Assembly to continue the suspension. Passage of the Joint Resolution by the General Assembly within 180 days after the certification is received by the Administrative Code Division will have the effect of repealing the emergency rule or portion thereof. Such The rule or portion thereof shall be immediately removed from the compilation of effective rules by the Administrative Code Division. (Ill. Rev. Stat. 1991, ch. 127, par. 1005-125(c)) [5 ILCS 100/5-125(c)]

6) Upon the affirmative vote of the majority of the members of the Joint Committee voting, a prohibition against the fitting suspension of an emergency rule may be withdrawn. Withdrawal of a prohibition against fitting suspension must be done prior to the passage of the Joint Resolution in either House of the General Assembly. The Joint Committee shall issue a

JOINT COMMITTEE ON ADMINISTRATIVE RULES

NOTICE OF ADOPTED AMENDMENT(S)

Certification of Withdrawal of Pitting Prohibition Suspension of Emergency et Emergency Rulemaking Rules to the agency in the manner shown in Exhibit F of this Part and shall certify that Part action to the Administrative Code Division within 5 working days after the Joint Committee hearing.

(Source: Amended at 18 Ill. Reg. _____, effective January 13, 1994)

Section 230.700 Failure to Object or Issue Recommendation

The failure of the Joint Committee to issue an objection or recommendation to an emergency rule or rulemaking shall not be construed to imply approval of the rule or rulemaking by the Joint Committee or the General Assembly. (Ill. Rev. Stat. 1991, ch. 127, par. 1005-100) [5 ILCS 100/5-100]

(Source: Amended at 18 Ill. Reg. _____, effective January 13, 1994)

Section 230.800 Agency Response to Objection

a) The agency shall respond to an objection which is issued by the Joint Committee within 90 days after receipt of the statement of specific objections pursuant to Section 5-120 of the Act. The response should be made, in writing, in the manner shown in Exhibit D of this Part, and shall be signed by the agency head. Response to a single objection cannot be combined (e.g., modify in part, refuse in part).

b) The agency shall respond to each objection of the Joint Committee by one of the methods enumerated in this subsection, as required by Section 5-120 of the Act.

- 1) Amend the emergency rule to meet the Joint Committee's objection.
- 2) Repeal the emergency rule.
- 3) Refuse to amend or repeal the emergency rule. A notice of refusal must also be submitted to the Administrative Code Division for publication in the Illinois Register if the agency responds in this manner.

c) If the agency elects to amend or repeal the emergency rule in response to an objection, it may repeal the emergency rule in its entirety or file a notice of modification of emergency rule in response to an objection of the Joint Committee with the Administrative Code Division shall initiate rulemaking pursuant to Section 5-91 of the Act. The agency shall complete the rulemaking process within 100 days after the rulemaking is proposed in the Illinois Register. An agency may elect to amend or repeal the emergency rule in response to an objection. Amendment Modification of an emergency rule by use of emergency rulemaking in response to Joint Committee objection shall not be deemed to violate the provisions of Section 5-45 of the Act, nor will it extend the expiration date of the rule.

d) An amendment to meet the Joint Committee's objection must be limited

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to the issues raised in the Certification and Statement of Objection. A suggestion or comment made by a member of the Joint Committee does not authorize a substantive change unless the suggestion or comment is ratified by the Joint Committee through the issuance of a Certification and Statement of Objection to the emergency rule or rulemaking.

- e) The failure of an agency to respond to an objection of the Joint Committee within 90 days of after receipt of the objection shall be deemed to be a refusal to amend or repeal the rule pursuant to Section 5-120(g) of the Act.

(Source: Amended at 18 Ill. Reg. _____, effective January 13, 1994)

Section 230.900 Agency Response to Recommendation

- a) The agency should respond to a recommendation ~~which is~~ issued by the Joint Committee within 90 days after receipt of the statement of specific recommendations. The agency response should address each of the specific recommendations stated by the Joint Committee and should clearly state the nature of (agreement to amend, agreement to repeal, refusal to amend or repeal) and rationale for the response. The response should be made in the manner shown in Exhibit E of this Part. The agency should respond to each Joint Committee recommendation for action in one of the following ways:

- 1) Agree to pursue the action recommended by the Joint Committee.
- 2) Refuse to pursue the action recommended by the Joint Committee.
- c) Responses should be submitted to the Joint Committee, in writing, and shall be signed by the agency head.
- d) The failure of an agency to respond to a recommendation of the Joint Committee within 90 days of after receipt of the recommendation shall be deemed to be a refusal.
- e) The failure of an agency to complete rulemaking ~~which was~~ proposed in response to a recommendation within 180 days after the rulemaking commenced shall be deemed to be a refusal to amend or repeal the rule.

(Source: Amended at 18 Ill. Reg. _____, effective January 13, 1994)

Section 230.1000 Analysis of Agency Response

- a) If the Joint Committee finds that the agency's response ~~does not~~ ~~remedy the~~ to an objection or recommendation is not adequate, the Committee will notify the agency and submit a copy of such notification to the Administrative Code Division for publication in the Illinois Register ~~pursuant to Section 7-07 of the Act~~. The notice will include a specific statement of the reasons the Joint Committee has determined that the response to the objection or recommendation is not adequate ~~has not been remedied~~. Failure of the agency to respond

JOINT COMMITTEE ON ADMINISTRATIVE RULES

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to a Joint Committee objection or recommendation shall be deemed to be a refusal.

- b) If ~~the Joint Committee finds that the agency's response does not~~ ~~remedy the recommendation~~ it will notify the agency and submit a copy of such notification to the Administrative Code Division for publication in the next available issue of the Illinois Register pursuant to Section 7-07 of the Act. ~~The notice will include a specific statement of the reasons the Joint Committee has determined the recommendation has not been remedied. Failure of the agency to respond to a Joint Committee recommendation shall be deemed to be a refusal to pursue the recommended action.~~

- c) If the Agency fails to remedy adequately respond to an objection or recommendation, the Joint Committee may draft legislation to address the problems. Such legislation must be approved by a majority vote and may be introduced in either house of the General Assembly. (Ill. Rev. Stat. 1991, ch. 127, par. 1005-120) (5 ILCS 100/5-120)

(Source: Amended at 18 Ill. Reg. _____, effective January 13, 1994)

JOINT COMMITTEE ON ADMINISTRATIVE RULES

NOTICE OF ADOPTED AMENDMENT(S)

Section 230. EXHIBIT A Certification of Objection to Emergency or Peremptory Rules

JOINT COMMITTEE ON ADMINISTRATIVE RULES

CERTIFICATION OF OBJECTION

TO [EMERGENCY OR PEREMPTORY] RULES

County-of-Sangamon

+

State-of-Illinois

+

I, (Director's name), Executive Director of the Joint Committee on Administrative Rules, being first duly sworn on oath, depose and state that, pursuant to Sections 5-110 and 5-120 of the Illinois Administrative Procedure Act, ~~as amended~~, the Joint Committee on Administrative Rules, at its meeting on (meeting date), ~~objected~~ voted an Objection to the (agency name) (emergency or peremptory rule(s)) rules entitled ~~or concerning~~ (Heading of the Part, Code Citation), published in the (publication date) Illinois Register.

A statement of the Joint Committee's specific ~~object~~ objections accompanies this certification.

~~Please take notice that~~ Section 5-120 of the Illinois Administrative Procedure Act requires the agency ~~failure of the~~ agency to respond to the Joint Committee's Objection ~~object~~ to this a rule within 90 days of after receipt of this Certification of Objection. The agency's response will be placed on the Committee's agenda for further consideration. Failure to respond shall constitute a refusal to amend or repeal the rule.

(Typewritten name)
Executive Director
Joint-Committee-on-Administrative-Rules

Subscribed and sworn to before me this (Date) day of (Month), 19(Year).

Notary Public

(Source: Amended at 18 Ill. Reg. _____, effective January 13, 1994)

JOINT COMMITTEE ON ADMINISTRATIVE RULES

NOTICE OF ADOPTED AMENDMENT(S)

Section 230. EXHIBIT B Certification of Recommendation to Emergency or Peremptory Rules (Repealed)

County-of-Sangamon

+

State-of-Illinois

+

I, (Director's name), Executive Director of the Joint Committee on Administrative Rules, being first duly sworn on oath, depose and state that, pursuant to Sections 7-04 and 7-07 of the Illinois Administrative Procedure Act, ~~as amended~~, the Joint Committee on Administrative Rules, at its meeting on (meeting date), ~~assued~~ a recommendation concerning the (agency name) (emergency or peremptory rule(s)) entitled ~~or concerning~~ (Heading of the Part, Code Citation), published in the (publication date) Illinois Register.

A statement of the Joint Committee's specific recommendation(s) accompanies this certification.

Please take notice that failure of the agency to respond to the Joint Committee's recommendation(s) to a rule within 90 days of receipt of this Certification of Recommendation shall constitute a refusal to amend or repeat the rule.

=====
(Typewritten name)
Executive Director
Joint-Committee-on-Administrative-Rules

Subscribed and sworn to before me this (Date) day of (Month), 19(Year).

=====
Notary Public

(Source: Repealed at 18 Ill. Reg. _____, effective January 13, 1994)

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JOINT COMMITTEE ON ADMINISTRATIVE RULES

NOTICE OF ADOPTED AMENDMENT(S)

Section 230. EXHIBIT C Certification of Suspension of Emergency or Peremptory Rules

JOINT COMMITTEE ON ADMINISTRATIVE RULES

CERTIFICATION OF SUSPENSION
OF [EMERGENCY OR PEREMPTORY] RULES

County-of-Sangamon
+
State-of-Illinois
+

The Joint Committee on Administrative Rules hereby certifies that, pursuant to Section 5-125 of the Illinois Administrative Procedure Act, as amended, the Joint Committee on Administrative Rules, at its meeting on (Meeting--Date meeting date), suspended the (agency name) rules entitled (Heading of the Part, Code Citation)1, when--were published in the (publication date) Illinois Register.

A statement of the Joint Committee's specific reasons for suspension accompanies this certification.

Please--take--notice--that--the The agency is prohibited from enforcing, or invoking for any reason, these rules which have been suspended and from filing with the Secretary of State any rule having substantially the same purpose and effect as these suspended rules for at least 180 days from the date this certification and statement are received by the Secretary of State.

Certified (Date)-

{Signature} (Typewritten name)
Executive Director
{By:
{Signature}
{Typewritten-name}

{Typewritten-name}
{Typewritten-name}
So-Chairman
Joint-Committee-on-Administrative-Rules

Subscribed and Sworn sworn to before me this (Date) day of (Month), 19(Year).

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JOINT COMMITTEE ON ADMINISTRATIVE RULES

NOTICE OF ADOPTED AMENDMENT(S)

Notary Public

(Source: Amended at 18 Ill. Reg. _____, effective January 13, 1994)

JOINT COMMITTEE ON ADMINISTRATIVE RULES

NOTICE OF ADOPTED AMENDMENT(S)

Section 230.EXHIBIT D Agency Response. to Joint Committee Objection to
Emergency or Peremptory Rules

Date: _____

Agency: _____

Heading of the Part: _____

Code Citation: _____

Register Citation: _____

Response-(check-one): ===== Initiate-rulemaking-to-repeal-the-rules
to-meet-the-joint-committee's-objection
===== Initiate--rulemaking-to-amend-the-rules
to-meet-the-joint-committee's-objection
===== Refusal-to--initiate--rulemaking---to
remedy-the-joint-committee's

If rulemaking will be initiated, date notice of proposed rulemaking was, or is expected to be, published in the Illinois Register: _____.

Agency Response to Specific Joint Committee Objections:

(Respond to each of the specific objections raised by the Joint Committee, indicating clearly the intended action of the agency in response to each recommendation Objection and the rationale for such response. Use additional pages as necessary.)

Signature of Agency Head _____

(Source: Amended at 18 Ill. Reg. _____, effective
January 13, 1994)

JOINT COMMITTEE ON ADMINISTRATIVE RULES

NOTICE OF ADOPTED AMENDMENT(S)

Section 230.EXHIBIT E Agency Response to Joint Committee Recommendation to
Emergency or Peremptory Rules

Date: _____

Agency: _____

Heading of the Part: _____

Code Citation: _____

Register Citation: _____

Response-(check-one): ===== Agree-to-pursue-the-action-recommended
by-the-joint-committee
===== Refuse-to-pursue-the-action-recommended
by-the-joint-committee

If rulemaking will be initiated, date notice of proposed rulemaking was, or is expected to be, published in the Illinois Register: _____.

Agency Response to Specific Joint Committee Recommendations:

(Respond to each of the specific objections-raised Recommendation issued by the Joint Committee, indicating clearly the intended action of the agency in response to each recommendation Recommendation and the rationale for such response. Use additional pages as necessary.)

Signature of Agency Head _____

(Source: Amended at 18 Ill. Reg. _____, effective
January 13, 1994)

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JOINT COMMITTEE ON ADMINISTRATIVE RULES

JOINT COMMITTEE ON ADMINISTRATIVE RULES

NOTICE OF ADOPTED AMENDMENT(S)

NOTICE OF ADOPTED AMENDMENT(S)

Section 230. EXHIBIT F Certification of Withdrawal of Filing--Prohibition
Suspension of Emergency or Peremptory Rulemaking Rules

JOINT COMMITTEE ON ADMINISTRATIVE RULES

January 13, 1994)

CERTIFICATION OF WITHDRAWAL OF
FILING--PROHIBITION SUSPENSION OF [EMERGENCY OR PEREMPTORY]
RULEMAKING RULES

County-of-Sangamon
+
State-of-Illinois
+

The Joint Committee on Administrative Rules hereby certifies that, pursuant to
Section 5-125 of the Illinois Administrative Procedure Act, ~~as amended~~, the
Joint Committee on Administrative Rules, at its meeting of on (meeting date),
has withdrawn the ~~prohibition--against--the--filing--of~~ suspension of rules
entitled (Heading of the Part, Code Citation), proposed by the (agency name).
The Joint Committee originally issued this prohibition suspension at its
(meeting date) meeting.

~~Please take notice that the agency The rule is no longer suspended and the
agency is no longer prohibited from enforcing or evoking the rule prohibited
from filing the rulemaking with the Secretary of State and from enforcing or
invoking the rulemaking.~~

Certified (date)

(Typewritten name)
(Typewritten name)
Co-Chairmen
Joint-Committee-on-Administrative-Rules

By:

(Typewritten name)
Executive Director

Subscribed and sworn to before me this (date) day of (month), 19(year).

Notary Public

(Source: Amended at 18 Ill. Reg. _____, effective

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

- 1) The Heading of the Part: Definitions and General Provisions

- 2) The Code Citation: 35 Ill. Adm. Code 211

- 3) Section Number: Adopted Action:

211.270	New
211.1070	New
211.2030	New
211.2610	New
211.3950	New
211.4050	Amended
211.4830	New
211.4850	New
211.4970	New
211.5390	New
211.5530	New
211.6110	New
211.6170	New
211.6250	New
211.6630	New
211.6650	New
211.6710	New
211.6830	New
211.7050	New

- 4) Statutory Authority: 415 ILCS 5/9, 9.1, 10, 27, and 28.5 (1992).

- 5) Effective Date of Rule(s) (Amendments, Repealer): January 18, 1994

- 6) Does this rulemaking contain an automatic repeal date?
No.

- 7) Does this rule (amendment, repealer) contain incorporations by reference? No.

- 8) Date Filed in Agency's Principal Office: January 6, 1994

- 9) Notice(s) of Proposal Published in Illinois Register: 17 Ill. Reg. 12491 (August 6, 1993).

- 10) Has JCAR issued a Statement of Objections to this (these)

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

- Rule(s)? No.

- 11) Difference(s) between proposal and final version:

The Board made language changes to the following definitions: 211.2030 "Enhanced Under-the-Cup Fill"; 211.2610 "Gel Coat"; 211.4830 "Polyester Resin Material(s)"; 211.4850 "Polyester Resin Products Manufacturing Process"; and 211.4970 "Potential to Emit".

- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? No changes were necessary.

- 13) Will this rule (amendments, repealer) replace an emergency rule currently in effect? No.

- 14) Are there any amendments pending on this Part? No.

- 15) Summary and Purpose of Rule(s):

The amendments add definitions consistent with modifications to the requirements for major sources in the Chicago ozone nonattainment area as required by the Clean Air Act (42 U.S.C. § 7401 et seq.). The overall result of these modifications will be a requirement that all sources which emit or have the potential to emit 25 tons or more per year of volatile organic material (VOM) use reasonably available control technology (RACT).

- 16) Information and questions regarding this adopted rule shall be directed to:

Elizabeth Schroer Harvey
Illinois Pollution Control Board
100 W. Randolph Street, Suite 11-500
Chicago, IL 60601
312/814-6921

The full text of the adopted rule(s) begins on the following page:

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENT(S)

TITLE 35: ENVIRONMENTAL PROTECTION

SUBTITLE B: AIR POLLUTION

CHAPTER I: POLLUTION CONTROL BOARD

SUBCHAPTER C: EMISSION STANDARDS AND LIMITATIONS
FOR STATIONARY SOURCES

PART 211

DEFINITIONS AND GENERAL PROVISIONS

SUBPART A: GENERAL PROVISIONS

Section	
211.101	Incorporations by Reference
211.102	Abbreviations and Units

SUBPART B: DEFINITIONS

Section	
211.121	Other Definitions
211.122	Definitions (Repealed)
211.130	Accelacota
211.150	Accumulator
211.170	Acid Gases
211.210	Actual Heat Input
211.230	Adhesive
211.250	Aeration
211.270	Aerosol Can Filling Line
211.290	Afterburner
211.310	Air Contaminant
211.330	Air Dried Coatings
211.350	Air Oxidation Process
211.370	Air Pollutant
211.390	Air Pollution
211.410	Air Pollution Control Equipment
211.430	Air Suspension Coater/Dryer
211.450	Airless Spray
211.470	Air Assisted Airless Spray
211.490	Annual Grain Through-Put
211.510	Application Area
211.530	Architectural Coating
211.550	As Applied
211.570	Asphalt
211.590	Asphalt Prime Coat
211.610	Automobile
211.630	Automobile or Light-Duty Truck Assembly Source or Automobile or Light-Duty Truck Manufacturing Plant
211.650	Automobile or Light-Duty Truck Refinishing
211.670	Baked Coatings
211.690	Batch Loading

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENT(S)

211.710	Bead-Dipping
211.730	Binders
211.750	British Thermal Unit
211.770	Brush or Wipe Coating
211.790	Bulk Gasoline Plant
211.810	Bulk Gasoline Terminal
211.830	Can
211.850	Can Coating
211.870	Can Coating Line
211.890	Capture
211.910	Capture Device
211.930	Capture Efficiency
211.950	Capture System
211.970	Certified Investigation
211.990	Choke Loading
211.1010	Clean Air Act
211.1050	Cleaning and Separating Operation
211.1070	Cleaning Materials
211.1090	Clear Coating
211.1110	Clear Topcoat
211.1130	Closed Purged System
211.1150	Closed Vent System
211.1170	Coal Refuse
211.1190	Coating
211.1210	Coating Applicator
211.1230	Coating Line
211.1250	Coating Plant
211.1270	Coil Coating
211.1290	Coil Coating Line
211.1310	Cold Cleaning
211.1330	Complete Combustion
211.1350	Component
211.1370	Concrete Curing Compounds
211.1390	Concentrated Nitric Acid Manufacturing Process
211.1410	Condensate
211.1430	Condensible PM-10
211.1470	Continuous Process
211.1490	Control Device
211.1510	Control Device Efficiency
211.1530	Conventional Soybean Crushing Source
211.1550	Conveyorized Degreasing
211.1570	Crude Oil
211.1590	Crude Oil Gathering
211.1610	Crushing
211.1630	Custody Transfer
211.1650	Cutback Asphalt
211.1670	Daily-Weighted Average VOM Content
211.1690	Day
211.1710	Degreaser

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENT(S)

211.1730	Delivery Vessel
211.1750	Dip Coating
211.1770	Distillate Fuel Oil
211.1790	Drum
211.1810	Dry Cleaning Operation or Dry Cleaning Facility
211.1830	Dump-Pit Area
211.1850	Effective Grate Area
211.1870	Effluent Water Separator
211.1890	Electrostatic Bell or Disc Spray
211.1910	Electrostatic Spray
211.1930	Emission Rate
211.1950	Emission Unit
211.1970	Enamel
211.1990	Enclose
211.2010	End Sealing Compound Coat
211.2030	Enhanced Under-the-Cup Fill
211.2050	Ethanol Blend Gasoline
211.2070	Excess Air
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APPENDIX A Rule into Section Table

APPENDIX B Section into Rule Table

AUTHORITY: Implementing Sections 9, 9.1 and 10 and authorized by Section 27 and 28.5 of the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111 1/2, pars. 1009, 1010 and 1027), (P.A. 87-1213, effective September 26, 1992) [415 ILCS 5/9, 10, 27 and 28.5].

SOURCE: Adopted as Chapter 2: Air Pollution, Rule 201: Definitions, R71-23, 4 PCB 191, filed and effective April 14, 1972; amended in R74-2 and R75-5, 32 PCB 295, at 3 Ill. Reg. 5, p. 777, effective February 3, 1979; amended in R78-3 and 4, 35 PCB 75 and 243, at 3 Ill. Reg. 30, p. 124, effective July 28,

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1979; amended in R80-5, at 7 111. Reg. 1244, effective January 21, 1983; codified at 7 111. Reg. 13590; amended in R82-1 (Docket A) at 10 111. Reg. 12624, effective July 7, 1986; amended in R85-21(A) at 11 111. Reg. 11747, effective June 29, 1987; amended in R86-34 at 11 111. Reg. 12267, effective July 10, 1987; amended in R86-39 at 11 111. Reg. 20804, effective December 14, 1987; amended in R82-14 and R86-37 at 12 111. Reg. 787, effective December 24, 1987; amended in R86-18 at 12 111. Reg. 7284, effective April 8, 1988; amended in R86-10 at 12 111. Reg. 7621, effective April 11, 1988; amended in R88-23 at 13 111. Reg. 10862, effective June 27, 1989; amended in R89-8 at 13 111. Reg. 17457, effective January 1, 1990; amended in R89-16(A) at 14 111. Reg. 9141, effective May 23, 1990; amended in R88-30(B) at 15 111. Reg. 5223, effective March 28, 1991; amended in R88-14 at 15 111. Reg. 7901, effective May 14, 1991; amended in R91-10 at 15 111. Reg. 15564, effective October 11, 1991; amended in R91-6 at 15 111. Reg. 15673, effective October 14, 1991; amended in R91-22 at 16 111. Reg. 7656, effective May 1, 1992; amended in R91-24 at 16 111. Reg. 13526, effective August 24, 1992; amended in R93-9 at 17 111. Reg. 16504, effective September 27, 1993; amended in R93-11 at 17 111. Reg. 21471, effective December 7, 1993; amended in R93-14 at 18 111. Reg. _____, effective January 18, 1994.

NOTE: In this Part, superscript numbers or letters are denoted by parentheses; subscript are denoted by brackets.

SUBPART B: DEFINITIONS

Section 211.270 Aerosol Can Filling Line

"Aerosol can filling line" means an operation where a series of process steps are used to fill and seal aerosol cans.

(Source: Added at 18 111. Reg. _____, effective January 18, 1994.)

Section 211.1070 Cleaning Materials

"Cleaning materials" mean any materials used for cleaning an emission unit; cleaning tools, equipment or other items used with the emission unit; cleaning the walls or area in which the emission unit is located; or cleaning personnel or materials used for other cleaning activity associated with an emission unit.

(Source: Added at 18 111. Reg. _____, effective January 18, 1994.)

Section 211.2030 Enhanced Under-the-Cup Fill

"Enhanced under-the-cup fill" means an improved under-the-cup technique, such as use of Kartridy Pak low pressure sequencing springs in conjunction with process temperature gradient control, which forces most propellant which would otherwise remain in the headspace of the fill machine fitting into the aerosol

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can by using either a compressed non-VOM gas such as nitrogen or vaporization of the propellant itself. Enhanced under-the-cup fill may require adjustment of the fill machine to reduce the hold-down pressure on the cup during the period in the filling cycle when remaining propellant in the fitting is forced into the can.

(Source: Added at 18 111. Reg. _____, effective January 18, 1994.)

Section 211.2610 Gel Coat

"Gel coat" means a resin coating, either pigmented or clear, applied to the surface of a mold, that becomes an integral part of a polyester resin product, and that provides a cosmetic enhancement and improves resistance to degradation from exposure to the elements.

(Source: Added at 18 111. Reg. _____, effective January 18, 1994.)

Section 211.3950 Monomer

"Monomer" means a relatively low-molecular-weight organic compound that may combine with itself or other similar compounds by a cross-linking reaction to become a polymer.

(Source: Added at 18 111. Reg. _____, effective January 18, 1994.)

Section 211.4050 Non-contact Process Water Cooling Tower

"Non-contact process water cooling tower" means a towerlike device in which water is cooled by contact with atmospheric air and evaporation, where such water has been or will be used for cooling of a process stream where VOM is present without intentional direct contact of the cooling water and process stream.

(Source: Amended at 18 111. Reg. _____, effective January 18, 1994.)

Section 211.4830 Polyester Resin Material(s)

"Polyester resin material(s)" means gel coat and unsaturated polyester resin, such as isophthalic, orthophthalic, halogenated, bisphenol A, vinyl ester, or furan resins; cross linking agent(s); catalyst; inhibitors; accelerators; promoters; and any other material containing VOM used in polyester resin operations, including the following polyester resin materials:

- Corrosion resistant and fire retardant polyester resin materials used to make products for corrosive and fire retardant applications;
- High-strength polyester resin materials with a tensile strength of

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10,000 psi or more

c) Gel coat.

(Source: Added at 18 Ill. Reg. _____, effective January 18, 1994.)

Section 211.4850 Polyester Resin Products Manufacturing Process

"Polyester resin products manufacturing process" means a manufacturing process that fabricates or reworks products for commercial, military or industrial use by mixing, pouring, hand laying-up, impregnating, injecting, pultruding, forming, winding, spraying, and/or curing by using unsaturated polyester resin materials with fiber/glass, filters, or any other reinforcement materials.

(Source: Added at 18 Ill. Reg. _____, effective January 18, 1994.)

Section 211.4970 Potential to Emit

"Potential to emit (PTE)" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restriction on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is federally enforceable.

(Source: Added at 18 Ill. Reg. _____, effective January 18, 1994.)

Section 211.5390 Reclamation System

"Reclamation system" means equipment which reclaims spent solvents, surplus propellants, waste materials and other materials generated by an emission unit to produce solvent, propellant or other materials which may be reused in the emission unit.

(Source: Added at 18 Ill. Reg. _____, effective January 18, 1994.)

Section 211.5530 Repair

"Repair" means, with respect to polyester resin product manufacturing processes, a portion of the fabrication process that requires the addition of polyester resin materials to portions of a previously fabricated product in order to mend damage immediately following normal fabrication operations.

(Source: Added at 18 Ill. Reg. _____, effective January 18, 1994.)

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Section 211.6110 Solvent Recovery System

"Solvent recovery system" means equipment which processes spent solvents, surplus propellants and other VOM containing waste materials generated by an emission unit to recover VOM which can be productively used, either in the original unit or for another purpose, reducing the amount of such material which must be disposed of as waste.

(Source: Added at 18 Ill. Reg. _____, effective January 18, 1994.)

Section 211.6170 Specialty Leather

"Specialty leather" means leather in one of the following categories:

- a) "Specialty shoe leather," such as "CHROMEXCEL" (TM) leather, that is:
 - 1) A select grade of chrome tanned, bark retanned leather;
 - 2) Retanned to over 25% by weight grease, wax and oils by direct contact with such materials in liquefied form at elevated temperature without the presence of water;
 - 3) Finished with coating materials which adhere to the leather surface to provide color and a rich visual luster while allowing a surface that feels oily; and
- b) Used primarily for manufacture of shoes.
 - 1) "Specialty football leather," such as "TANNED IN TACK" (TM) leather that is:
 - 1) Top grade, chrome tanned, bark retanned, and fat liquored leather;
 - 2) Finished with coating materials which impregnate into the leather to produce a permanent non-slip "tacky" exterior surface on the leather. This "tacky" characteristic continues to exist with wear; and
 - 3) Used primarily for the manufacture of footballs.

(Source: Added at 18 Ill. Reg. _____, effective January 18, 1994.)

Section 211.6250 Stain Coating

"Stain coating" means a non-protective coating containing dye or pigment which is applied to a substrate to impart color without obscuring the grain of the substrate, i.e., the appearance and texture of the surface of the substrate due to its physical structure, or for a transparent substrate, without blocking the passage of light through the substrate.

(Source: Added at 18 Ill. Reg. _____, effective January 18, 1994.)

Section 211.6630 Through-the-Valve Fill

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"Through-the-valve fill" means, with respect to filling of aerosol cans with propellant, a method of filling cans by injecting propellant into the can through and around the outlet tube of the can and aerosol valve. Through-the-valve fill is a different method of fill than under-the-cup fill.

(Source: Added at 18 Ill. Reg. _____, effective January 18, 1994.)

Section 211.6650 Tooling Resin

"Tooling resin" means resins used to fabricate molds and fixtures used in manufacturing of fiberglass products.

(Source: Added at 18 Ill. Reg. _____, effective January 18, 1994.)

Section 211.6710 Touch-Up

"Touch-up" means, with respect to polyester resin product manufacturing processes, a portion of the fabrication process that is necessary to cover minor imperfections.

(Source: Added at 18 Ill. Reg. _____, effective January 18, 1994.)

Section 211.6830 Under-the-Cup Fill

"Under-the-cup fill" means, with respect to filling of aerosol cans with propellant, a method of filling cans whereby the propellant is introduced through the junction between the annular top of the can and the metal cup which holds the outlet tube and aerosol valve. Under-the-cup fill is a different method of fill than through-the-valve fill.

(Source: Added at 18 Ill. Reg. _____, effective January 18, 1994.)

Section 211.7050 Vapor Suppressed Polyester Resin

"Vapor suppressed polyester resin" means a polyester resin material which contains catalysts or additives designed to reduce monomer evaporation loss during application and curing.

(Source: Added at 18 Ill. Reg. _____, effective January 18, 1994.)

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- 1) Heading of the Part: SOLID WASTE DISPOSAL: GENERAL PROVISIONS
- 2) Code Citation: 35 Ill. Adm. Code 810
- 3) Section Numbers: Adopted Action:
810.103 Amendment
810.104 Amendment
- 4) Statutory Authority: Implementing Section 5, 21, 21.1, 22, 22.17 and 22.40, and authorized by Section 27 of the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111 1/2, pars. 1005, 1021, 1021.1, 1022, 1022.17, 1022.40 and 1027 as amended by P.A. 88-512 and 88-496 [415 ILCS 5/5, 5/21, 5/21.1, 5/22, 5/22.17, 5/22.40 and 5/27]).
- 5) Effective Date of Rule(s): January 13, 1994
- 6) Does this rulemaking contain an automatic repeal date?: No
- 7) Does this rule contain incorporations by reference?
Yes. Section 810.104 is the central location for the references incorporated for all of Parts 810 through 815. This Section is amended to incorporate by reference a testing method required by USEPA for use by MSWLFs, and a list of hazardous organic and inorganic constituents, actually employed in 35 Ill. Adm. Code 811.
- 8) Date filed in Board's principal office: December 17, 1993
- 9) Notice of Proposal Published in Illinois Register:
17 Ill. Reg. 8702, June 18, 1993
- 10) Has JCAR issued a Statement of Objections to these rules? No
Section 22.40 of the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1022.40 [415 ILCS 5/22.40]) as amended by P.A. 88-512 and 88-496 provides that Section 5 of the Administrative Procedure Act shall not apply. Because this rulemaking is not subject to Section 5 of the APA, it is not subject to first notice or to second notice review by JCAR.

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11) Differences between proposal and final version:

The changes suggested by the Administrative Code Unit were made and minor editorial changes were made in the definition of "Lateral Expansion".

12) Have all the changes agreed upon by the Board and JCAR been made as indicated in the agreement letter issued by JCAR?

Section 22.40 of the Environmental Protection Act as amended by P.A. 88-512 and 88-496 provides that Section 5 of the Administrative Procedure Act shall not apply. Because this rulemaking is not subject to Section 5 of the APA, it is not subject to first notice or to second notice review by JCAR.

13) Will this rule replace an emergency rule currently in effect? No

14) Are there any other amendments pending on this part? No

15) Summary and purpose of Rule:

A more detailed description is contained in the Board's opinions of June 3, 1993, September 16, 1993, and December 16, 1993, in R93-10, which Opinions are available from the address below.

The Board is initiating certain amendments to Parts 810, 811, and 814 of its nonhazardous waste landfill regulations so as to make them at least as stringent as the USEPA regulations implementing Subtitle D of the Resource Conservation and Recovery Act (RCRA). The USEPA regulations address Municipal Solid Waste Landfill Facilities (MSWLF). The federal Subtitle D landfill regulations are found at 40 CFR 258. This rulemaking updates Illinois Nonhazardous Waste Landfill rules to correspond with the major federal rulemaking of October 9, 1991, at 56 Fed. Reg. 50978.

The enabling State legislation, P.A. 88-512 and 88-496, contains a new Section 22.40 in the Environmental Protection Act (Act) which mandates Board rulemaking. This mandate requires that the Board adopt regulations pursuant to Section 7.2 of the Act that are identical in substance to regulations adopted by the USEPA to implement Sections 4004 and 4010 of the Resource Conservation and Recovery Act of 1976 (P.L. 94-580, codified as 42 U.S.C. §§ 6944 & 6950). Presently pending Section 22.40 of the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111½, par. 1022.40 [415 ILCS 5/22.40], H.B. 299) provides that Section 5 of the

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Administrative Procedure Act shall not apply. Because this rulemaking is not subject to Section 5 of the APA, it is not subject to first notice or to second notice review by JCAR.

Specifically, the amendments to Part 810 adds: (i) the following definitions relating to municipal solid waste landfill (MSWLF) units to Section 810.103: "Existing MSWLF unit", "Household waste", "Lateral expansion", "Municipal solid waste landfill unit" or "MSWLF unit", "New MSWLF unit", "Owner", and "Resource conservation and recovery act;" and (ii) two incorporation by references to Section 810.104, which incorporate a USEPA document containing test methods for evaluating solid waste and a list of hazardous organic and inorganic constituents found at 40 CFR 258 Appendix II (1992).

16) Information and questions regarding this adopted rule shall be directed to:

Marie E. Tipsord
Illinois Pollution Control Board
100 W. Randolph St., Ste. 11-500
Chicago, IL 60610
312-814-4925

The full text of the adopted rule begins on the following page:

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NOTICE OF ADOPTED AMENDMENTS

TITLE 35: ENVIRONMENTAL PROTECTION

SUBTITLE G: WASTE DISPOSAL

CHAPTER I: POLLUTION CONTROL BOARD

SUBCHAPTER i: SOLID WASTE AND SPECIAL WASTE HAULING

PART 810

SOLID WASTE DISPOSAL: GENERAL PROVISIONS

Section

810.101 Scope and Applicability

810.102 Severability

810.103 Definitions

810.104 Incorporations by Reference

AUTHORITY: Implementing Sections 5, 21, 21.1, 22 and 22.17, and authorized by Section 27 of the Environmental Protection Act (Ill. Rev. Stat. ~~1989~~1991, ch. 111 1/2, pars. 1005, 1021, 1021.1, 1022, 1022.17 and 1027 [415 ILCS 5/5, 5/21, 5/21.1, 5/22, 5/22.17 and 5/27]).

SOURCE: Adopted in R88-7 at 14 Ill. Reg. 15838, effective September 18, 1990; amended in R93-10 at ___ Ill. Reg. effective January 13, 1994.

NOTE: Capitalization indicates statutory language.

Section 810.103

Definitions

Except as stated in this Section, or unless a different meaning of a word or term is clear from the context, the definition of words or terms in this Part shall be the same as that applied to the same words or terms in the Environmental Protection Act (Act) (Ill. Rev. Stat. ~~1989~~1991, ch. 111 1/2, pars. 1001 et. seq. [415 ILCS 5/1 et. seq.]).

"Act" means the Environmental Protection Act, Ill. Rev. Stat. ~~1989~~1991, ch. 111 1/2, pars. 1001 et. seq. [415 ILCS 5/1 et. seq.].

"Admixtures" are chemicals added to earth materials to improve for a specific application the physical or chemical properties of the earth materials. Admixtures include, but are not limited to: lime, cement, bentonite and sodium silicate.

"AGENCY" IS THE ENVIRONMENTAL PROTECTION AGENCY ESTABLISHED BY THE ENVIRONMENTAL PROTECTION ACT. (Section 3.08 of the Act.)

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"Applicant" means the person, submitting an application to the Agency for a permit for a solid waste disposal facility.

"AQUIFER" MEANS SATURATED (WITH GROUNDWATER) SOILS AND GEOLOGIC MATERIALS WHICH ARE SUFFICIENTLY PERMEABLE TO READILY YIELD ECONOMICALLY USEFUL QUANTITIES OF WATER TO WELLS, SPRINGS, OR STREAMS UNDER ORDINARY HYDRAULIC GRADIENTS and whose boundaries can be identified and mapped from hydrogeologic data. (Section 3 of the Illinois Groundwater Protection Act (Ill. Rev. Stat. ~~1989~~1991, ch. 111 1/2, par. 7453 [415 ILCS 55/3]).)

"Bedrock" means the solid rock formation immediately underlying any loose superficial material such as soil, alluvium or glacial drift.

"BOARD" IS THE POLLUTION CONTROL BOARD ESTABLISHED BY THE ACT. (Section 3.04 of the Act.)

"Borrow area" means an area from which earthen material is excavated for the purpose of constructing daily cover, final cover, a liner, a gas venting system, roadways or berms.

"Chemical waste" means a non-putrescible solid whose characteristics are such that any contaminated leachate is expected to be formed through chemical or physical processes, rather than biological processes, and no gas is expected to be formed as a result.

"Contaminated leachate" means any leachate whose constituent violate the standards of 35 Ill. Adm. Code 811.202.

"Design Period" means that length of time determined by the sum of the operating life of the solid waste landfill facility plus the postclosure care period necessary to stabilize the waste in the units.

"DISPOSAL" MEANS THE DISCHARGE, DEPOSIT, INJECTION, DUMPING, SPILLING, LEAKING OR PLACING OF ANY SOLID WASTE INTO OR ON ANY LAND OR WATER OR INTO ANY WELL SUCH THAT SOLID WASTE OR ANY CONSTITUENT OF THE SOLID WASTE MAY ENTER THE ENVIRONMENT BY BEING EMITTED INTO THE AIR OR DISCHARGED INTO ANY WATERS, INCLUDING GROUNDWATER. (Section 3.08 of the Act.) If the solid waste is accumulated and not confined or contained to prevent its entry into the environment, or there is no

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certain plan for its disposal elsewhere, such accumulation shall constitute disposal.

"Disturbed areas" means those areas within a facility that have been physically altered during waste disposal operations or during the construction of any part of the facility.

"Documentation" means items, in any tangible form, whether directly legible or legible with the aid of any machine or device, including but not limited to affidavits, certificates, deeds, leases, contracts or other binding agreements, licenses, permits, photographs, audio or video recordings, maps, geographic surveys, chemical and mathematical formulas or equations, mathematical and statistical calculations and assumptions, research papers, technical reports, technical designs and design drawings, stocks, bonds and financial records, that are used to support facts or hypotheses.

"Earth liners" means structures constructed from naturally occurring soil material that has been compacted to achieve a low permeability.

"Existing facility" or "Existing unit" means a facility or unit which is not defined in this Section as a new facility or a new unit.

"EXISTING MSWLF UNIT" MEANS ANY MUNICIPAL SOLID WASTE LANDFILL UNIT THAT HAS RECEIVED HOUSEHOLD WASTE BEFORE OCTOBER 9, 1993. (Section 3.87 of the Act.)

"Facility" means a site and all equipment and fixtures on a site used to treat, store or dispose of solid or special wastes. A facility consists of an entire solid or special waste treatment, storage or disposal operation. All structures used in connection with or to facilitate the waste disposal operation shall be considered a part of the facility. A facility may include, but is not limited to, one or more solid waste disposal units, buildings, treatment systems, processing and storage operations, and monitoring stations.

"Field capacity" means that maximum moisture content of a waste, under field conditions of temperature and pressure, above which moisture is released by gravity drainage.

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"Gas collection system" means a system of wells, trenches, pipes and other related ancillary structures such as manholes, compressor housing, and monitoring installations that collects and transports the gas produced in a putrescible waste disposal unit to one or more gas processing points. The flow of gas through such a system may be produced by naturally occurring gas pressure gradients or may be aided by an induced draft generated by mechanical means.

"Gas condensate" means the liquid formed as a landfill gas is cooled or compressed.

"Gas venting system" means a system of wells, trenches, pipes and other related structures that vents the gas produced in a putrescible waste disposal unit to the atmosphere.

"Geomembranes" means manufactured membrane liners and barriers of low permeability used to control the migration of fluids or gases.

"Geotextiles" are permeable manufactured materials used for purposes which include, but are not limited to, strengthening soil, providing a filter to prevent clogging of drains, collecting and draining liquids and gases beneath the ground surface.

"GROUNDWATER" MEANS UNDERGROUND WATER WHICH OCCURS WITHIN THE SATURATED ZONE AND WITHIN GEOLOGIC MATERIALS WHERE THE FLUID PRESSURE IN THE PORE SPACE IS EQUAL TO OR GREATER THAN ATMOSPHERIC PRESSURE. (Section 3 of the Illinois Groundwater Protection Act.)

"HOUSEHOLD WASTE" MEANS ANY SOLID WASTE (INCLUDING GARBAGE, TRASH, AND SANITARY WASTE IN SEPTIC TANKS) DERIVED FROM HOUSEHOLDS (INCLUDING SINGLE AND MULTIPLE RESIDENCES, HOTELS AND MOTELS, BUNKHOUSES, RANGER STATIONS, CREW QUARTERS, CAMPGROUNDS, PICNIC GROUNDS, AND DAY-USE RECREATION AREAS). (Section 3.89 of the Act.)

"Hydraulic barriers" means structures designed to prevent or control the seepage of water. Hydraulic barriers include, but are not limited to cutoff walls, slurry walls, grout curtains and liners.

"Inert waste" means any solid waste that will not decompose biologically, burn, serve as food for

vectors, form a gas, cause an odor, or form a contaminated leachate, as determined in accordance with Section 811.202(b). Such inert wastes shall include only non-biodegradable and non-putrescible solid wastes. Inert wastes may include, but are not limited to, bricks, masonry and concrete (cured for 60 days or more).

"Land application unit" means an area where wastes are agronomically spread over or disked into land or otherwise applied so as to become incorporated into the soil surface. For the purposes of this Part and 35 Ill. Adm. Code 811 through 815, a land application unit is not a landfill; however, other Parts of 35 Ill. Adm. Code: Chapter I may apply, and may include the permitting requirements of 35 Ill. Adm. Code 309.

"Landfill" means a unit or part of a facility in or on which waste is placed and accumulated over time for disposal, and which is not a land application unit, a surface impoundment or an underground injection well. For the purposes of this Part and 35 Ill. Adm. Code 811 through 815, landfills include waste piles, as defined in this Section.

"LATERAL EXPANSION" MEANS A HORIZONTAL EXPANSION OF THE ACTUAL WASTE BOUNDARIES OF AN EXISTING MSWLF UNIT OCCURRING ON OR AFTER OCTOBER 9, 1993. FOR PURPOSES OF THIS SECTION, A HORIZONTAL EXPANSION IS ANY AREA WHERE SOLID WASTE IS PLACED FOR THE FIRST TIME DIRECTLY UPON THE BOTTOM LINER OF THE UNIT, EXCLUDING SIDE SLOPES ON OR AFTER OCTOBER 9, 1993. (Section 3.88 Of the Act.)

"Leachate" means liquid that has been or is in direct contact with a solid waste.

"Lift" means an accumulation of waste which is compacted into a unit and over which cover is placed.

"Malodor" means an odor caused by ONE OR MORE CONTAMINANT EMISSIONS INTO THE ATMOSPHERE FROM A FACILITY THAT IS IN SUFFICIENT QUANTITIES AND OF SUCH CHARACTERISTICS AND DURATION AS TO BE DESCRIBED AS MALODOROUS AND WHICH MAY BE INJURIOUS TO HUMAN, PLANT, OR ANIMAL LIFE, TO HEALTH, OR TO PROPERTY, OR TO UNREASONABLY INTERFERE WITH THE ENJOYMENT OF LIFE OR PROPERTY. (Section 3.02 of the Act (defining "air pollution").)

"MUNICIPAL SOLID WASTE LANDFILL UNIT" OR "MSWLF UNIT" MEANS A CONTIGUOUS AREA OF LAND OR AN EXCAVATION THAT RECEIVES HOUSEHOLD WASTE, AND THAT IS NOT A LAND APPLICATION, SURFACE IMPOUNDMENT, INJECTION WELL, OR ANY PILE OF NONCONTAINERIZED ACCUMULATIONS OF SOLID, NONFLOWING WASTE THAT IS USED FOR TREATMENT OR STORAGE. A MSWLF UNIT MAY ALSO RECEIVE OTHER TYPES OF RCRA SUBTITLE D WASTES, SUCH AS COMMERCIAL SOLID WASTE, NONHAZARDOUS SLUDGE, SMALL QUANTITY GENERATOR WASTE AND INDUSTRIAL SOLID WASTE. SUCH A LANDFILL MAY BE PUBLICLY OR PRIVATELY OWNED OR OPERATED. A MSWLF UNIT MAY BE A NEW MSWLF UNIT, AN EXISTING MSWLF UNIT OR A LATERAL EXPANSION. A SANITARY LANDFILL IS SUBJECT TO REGULATION AS A MSWLF IF IT RECEIVES HOUSEHOLD WASTE. (Section 3.85 of the Act.)

"National Pollutant Discharge Elimination System" or "NPDES" means the program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits and imposing and enforcing pretreatment requirements under the Clean Water Act (33 U.S.C. 1251 et. seq.), Section 12(f) of the Environmental Protection Act and 35 Ill. Adm. Code 309.Subpart A and 310. "NPDES permit" means a permit issued under the NPDES program.

"New facility" or "New unit" means a solid waste landfill facility or a unit at a facility, if one or more of the following conditions apply:

It is a landfill or unit exempt from permit requirements pursuant to Section 21(d) of the Act that has not yet accepted any waste as of the effective date of this Part;

It is a landfill or unit not exempt from permit requirements pursuant to Section 21(d) of the Act that has no development or operating permit issued by the Agency pursuant to 35 Ill. Adm. Code 807 as of the effective date of this Part; or

It is a landfill with a unit whose maximum design capacity or lateral extent is increased after the effective date of this Part.

BOARD NOTE: A new unit located in an existing facility shall be considered a unit subject to 35 Ill. Adm. Code 814, which references applicable requirements of 35 Ill. Adm. Code 811.

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"NEW MSWLF UNIT" MEANS ANY MUNICIPAL SOLID WASTE LANDFILL UNIT THAT HAS RECEIVED HOUSEHOLD WASTE ON OR AFTER OCTOBER 9, 1993, FOR THE FIRST TIME. (Section 3.86 of the Act.)

"One hundred (100) year flood plain" means any land area which is subject to a one percent or greater chance of flooding in a given year from any source.

"One hundred (100) year, 24 hour precipitation event" means a precipitation event of 24 hour duration with a probable recurrence interval of once in 100 years.

"Operator" means the person responsible for the operation and maintenance of a solid waste disposal facility.

"Owner" means a person who has an interest, directly or indirectly, in land, including a leasehold interest, on which a person operates and maintains a solid waste disposal facility. The "owner" is the "operator" if there is no other person who is operating and maintaining a solid waste disposal facility.

"Perched watertable" means an elevated watertable above a discontinuous saturated lens, resting on a low permeability (such as clay) layer within a high permeability (such as sand) formation.

"Permit area" means the entire horizontal and vertical region occupied by a permitted solid waste disposal facility.

"PERSON" IS ANY INDIVIDUAL, PARTNERSHIP, CO-PARTNERSHIP, FIRM, COMPANY, CORPORATION, ASSOCIATION, JOINT STOCK COMPANY, TRUST, ESTATE, POLITICAL SUBDIVISION, STATE AGENCY, OR ANY OTHER LEGAL ENTITY, OR THEIR LEGAL REPRESENTATIVE, AGENT OR ASSIGNS. (Section 3.26 of the Act.)

"Professional engineer" means a person who has registered and obtained a seal pursuant to "The Illinois Professional Engineering Act" (Ill. Rev. Stat. 19891991, ch. 111, par. 5101 et. seq. [225 ILCS 325/1 et. seq.]).

"Professional land surveyor" means a person who has received a certificate of registration and a seal pursuant to "The Land Surveyors Act" (Ill. Rev. Stat.

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19891991, ch. 111, par. 3201 et. seq. [225 ILCS 330/1 et. seq.]).

"Putrescible waste" means a solid waste that contains organic matter capable of being decomposed by microorganisms so as to cause a malodor, gases, or other offensive conditions, or which is capable of providing food for birds and vectors. Putrescible wastes may form a contaminated leachate from microbiological degradation, chemical processes, and physical processes. Putrescible waste includes, but is not limited to, garbage, offal, dead animals, general household waste, and commercial waste. All solid wastes which do not meet the definitions of inert or chemical wastes shall be considered putrescible wastes.

"Publicly owned treatment works" or "POTW" means a treatment works that is owned by the State of Illinois or a unit of local government. This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastewater. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the unit of local government which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

"Recharge zone" means an area through which water can enter an aquifer.

"RESOURCE CONSERVATION AND RECOVERY ACT" "RCRA" MEANS THE RESOURCE CONSERVATION AND RECOVERY ACT OF 1976 (P.L. 94-580 Codified as 42 USC. §§ 6901 et. seq.) AS AMENDED. (Section 3.90 of the Act.)

"Responsible charge," when used to refer to a person, means that the person is normally present at a waste disposal site; directs the day-to-day overall operation at the site; and either is the owner or operator or is employed by or under contract with the owner or operator to assure that the day-to-day operations at the site are carried out in compliance with any Part of 35 Ill. Adm. Code: Chapter I governing operations at waste disposal sites.

"Runoff" means water resulting from precipitation that flows overland before it enters a defined stream channel, any portion of such overland flow that infiltrates

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into the ground before it reaches the stream channel, and any precipitation that falls directly into a stream channel.

"Salvaging" means the return of waste materials to use, under the supervision of the landfill operator, so long as the activity is confined to an area remote from the operating face of the landfill, it does not interfere with or otherwise delay the operations of the landfill, and it results in the removal of all materials for salvaging from the landfill site daily or separates them by type and stores them in a manner that does not create a nuisance, harbor vectors or cause an unsightly appearance.

"Scavenging" means the removal of materials from a solid waste management facility or unit which is not salvaging.

"Seismic Slope Safety Factor" means the ratio between the resisting forces or moments in a slope and the driving forces or moments that may cause a massive slope failure during an earthquake or other seismic event such as an explosion.

"Settlement" means subsidence caused by waste loading, changes in groundwater level, chemical changes within the soil and adjacent operations involving excavation.

"Shredding" means the mechanical reduction in particle sizes of solid waste. Putrescible waste is considered shredded if 90 percent of the waste by dry weight passes a 3 inch sieve.

"Significant Modification" means a modification to an approved permit issued by the Agency in accordance with Section 39 of the Act and 35 Ill. Adm. Code 813 that is required when one or more of the following changes, considered significant when that change measured by one or more parameters whose values lie outside the expected operating range of values as specified in the permit, are planned, occur or will occur:

- An increase in the capacity of the waste disposal unit over the permitted capacity;
- Any change in the placement of daily, intermediate or final cover;

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A decrease in performance, efficiency or longevity of the liner system;

A decrease in efficiency or performance of the leachate collection system;

A change in configuration, performance, or efficiency of the leachate management system;

A change in the final disposition of treated effluent or in the quality of the discharge from the leachate treatment or pretreatment system;

Installation of a gas management system, or a decrease in the efficiency or performance of an existing gas management system;

A change in the performance or operation of the surface water control system;

A decrease in the quality or quantity of data from any environmental monitoring system;

A change in the applicable background concentrations or the maximum allowable predicted concentrations;

A change in the design or configuration of the regraded area after development or after final closure;

A change in the amount or type of postclosure financial assurance;

Any change in the permit boundary;

A change in the postclosure land use of the property;

A remedial action necessary to protect groundwater;

Transfer of the permit to a new operator;

Operating authorization is being sought to place into service a structure constructed pursuant to a construction quality assurance program; or

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A change in any requirement set forth as a special condition in the permit.

"Sole source aquifer" means those aquifers designated pursuant to Section 1424(e) of the Safe Drinking Water Act of 1974, (42 U.S.C 300h-3).

"Solid Waste" means a waste that is defined in this Section as an inert waste, as a putrescible waste, as a chemical waste or as a special waste, and which is not also defined as a hazardous waste pursuant to 35 Ill. Adm. Code 721.

"SPECIAL WASTE" MEANS ANY INDUSTRIAL PROCESS WASTE, POLLUTION CONTROL WASTE OR HAZARDOUS WASTE, EXCEPT AS DETERMINED PURSUANT TO SECTION 22.9 OF THE ACT and 35 Ill. Adm. Code 808. (Section 3.45 of the Act.)

"Static Safety Factor" means the ratio between resisting forces or moments in a slope and the driving forces or moments that may cause a massive slope failure.

"Surface impoundment" means a natural topographic depression, a man-made excavation, or a diked area into which flowing wastes, such as liquid wastes or wastes containing free liquids, are placed. For the purposes of this Part and 35 Ill. Adm. Code 811 through 815, a surface impoundment is not a landfill. Other parts of 35 Ill. Adm. Code: Chapter I may apply, including the permitting requirements of 35 Ill. Adm. Code 309.

"Twenty-five (25) year, 24 hour precipitation event" means a precipitation event of 24 hour duration with a probable recurrence interval of once in 25 years.

"Uppermost aquifer" means the first geologic formation above or below the bottom elevation of a constructed liner or wastes, where no liner is present, which is an aquifer, and includes any lower aquifer that is hydraulically connected with this aquifer within the facility's permit area.

"Unit" means a contiguous area used for solid waste disposal.

"Unit of local government" means a unit of local government, as defined by Article 7, Section 1 of the Illinois Constitution. A unit of local government may

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include, but is not limited to, a municipality, a county, or a sanitary district.

"Waste pile" means an area on which non-containerized masses of solid, non flowing wastes are placed for disposal. For the purposes of this Part and 35 Ill. Adm. Code 811 through 815, a waste pile is a landfill, unless the operator can demonstrate that the wastes are not accumulated over time for disposal. At a minimum, such demonstration shall include photographs, records or other observable or discernable information, maintained on a yearly basis, that show that within the preceding year the waste has been removed for utilization or disposed elsewhere.

"Waste stabilization" means any chemical, physical or thermal treatment of waste, either alone or in combination with biological processes, which results in a reduction of microorganisms, including viruses, and the potential for putrefaction.

"Working face" means any part of a landfill where waste is being disposed.

"Zone of attenuation" is the three dimensional region formed by excluding the volume occupied by the waste placement from the smaller of the volumes resulting from vertical planes drawn to the bottom of the uppermost aquifer at the property boundary or 100 feet from the edge of one or more adjacent units.

(Source: Amended in R93-10 at — Ill. Reg. —, effective January 13, 1994)

Section 810.104 Incorporations by Reference

- a) The Board incorporates the following material by reference:

40 CFR 141.40 (1988).

Auditing Standards--Current Text, August 1, 1990 Edition, available through the American Institute of Certified Public Accountants, 1211 Avenue of the Americas, New York, NY 10036.

Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, EPA Publication SW-846

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(Third Edition, 1986 as amended by Update I (November, 1990). SW-846 and Update I are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, Ph: (202) 783-3238.

40 CFR 258.Appendix II (1992).

- b) This incorporation includes no later amendments or editions.

(Source: Amended in R93-10 at ___ Ill. Reg. _____, effective January 13, 1994)

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- 1) Heading of the Part: STANDARDS FOR EXISTING LANDFILLS AND UNITS
- 2) Code Citation: 35 Ill. Adm. Code 814
- 3) Section Numbers: Adopted Action:

814.101	Amendment
814.102	Amendment
814.103	Amendment
814.104	Amendment
814.105	Amendment
814.107	New Section
814.108	New Section
814.109	New Section
814.302	Amendment
814.402	Amendment
814.501	Amendment
814.App. A	New Section
- 4) Statutory Authority: Implementing Sections 5, 21, 21.1, 22, 22.17, 22.40 and 28.1, and authorized by Section 27 of the Environmental Protection Act as amended by P.A. 88-512 and 88-496 (Ill. Rev. Stat. 1991, ch. 111 1/2, pars. 1005, 1021, 1021.1, 1022, 1022.17, 1022.40, 1028.1 and 1027 [415 ILCS 5/5, 5/21, 5/21.1, 5/22, 5/22.17, 5/22.40, 5/28.1 and 5/27]).
- 5) Effective Date of Rule(s): January 13, 1994
- 6) Does this rulemaking contain an automatic repeal date?: No
If so, please specify the date:
- 7) Does this rule contain incorporations by reference? No
- 8) Date filed in Board's principal office: December 17, 1993
- 9) Notice of Proposal Published in Illinois Register:
17 Ill. Reg. 8714, June 18, 1993
- 10) Has JCAR issued a Statement of Objections to these rules? No
Section 22.40 of the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111, par. 1022.40 [415 ILCS 5/22.40]) as amended by P.A. 88-512 and 88-496 provides that Section 5 of the Administrative Procedure Act shall not apply. Because this rulemaking is not subject to Section 5 of the APA, it

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is not subject to first notice or to second notice review by JCAR.

11) Differences between proposal and final version:

Section 814.101: Section 814.101(b) has been amended to clarify the applicability of the Part 814 regulations to existing MSWLF units and lateral expansions, also added a requirement at Section 814.101(d) that requires an owner or operator of an existing MSWLF unit to comply with any other applicable federal laws and regulations.

Section 814.102: minor language changes to clarify the compliance dates applicable to existing MSWLF units.

Section 814.107: Added this Section to prescribe compliance dates for existing MSWLF units and lateral expansions.

Section 814.108: these requirements were proposed under Section 814.107 in the proposal for public comment.

Section 814.109: The Board has made language changes in this Section to clarify the permit requirements for lateral expansions at existing MSWLF units. Also, the Board has specified permit requirements for lateral expansions at existing MSWLF units operating under a permit issued pursuant to Part 813.

Section 814.302: Section 814.302(a)(1) has been amended to clarify that the airport restrictions specified at Section 811.302(f) do not apply to existing landfill units.

Section 814.302(c): amended to clarify the airport safety requirements applicable to existing MSWLF units and lateral expansions. The foundation and mass stability requirements are specified at Section 814.302(d). These requirements were previously specified in the proposal for public comment at Section 814.302(c)(2).

Section 814.302 (f) and (g): were added to include requirements relating to closure of existing MSWLF units at

Section 814.402(a)(1): amended to clarify that the airport restrictions specified at Section 811.302(f) do not apply to existing landfill units.

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Appendix A was added to incorporate additional requirements for existing MSWLF units and lateral expansions included in the Code of Federal Regulations

Section 814.402(b)(3)(I): has been added to limit the extent of the zone of compliance to 150 meters.

Section 814.402(c): was amended to clarify the airport safety requirements applicable to existing MSWLF units and lateral expansions.

Section 814.402(d): These requirements were previously specified in the proposal for public comment at Section 814.402(c)(2).

Section 814.402 (f) and (g): includes additional requirements relating to closure of existing MSWLF units

12) Have all the changes agreed upon by the Board and JCAR been made as indicated in the agreement letter issued by JCAR?

Section 22.40 of the Environmental Protection Act as amended by P.A. 88-512 and 88-496 provides that Section 5 of the Administrative Procedure Act shall not apply as amended by P.A. 88-512 and 88-496. Because this rulemaking is not subject to Section 5 of the APA, it is not subject to first notice or to second notice review by JCAR.

13) Will this rule replace an emergency rule currently in effect? No

14) Are there any other amendments pending on this Part? No

15) Summary and purpose of Rule:

A more detailed description is contained in the Board's opinions issued on June 3, 1993, September 16, 1993, and December 16, 1993, in R93-10, which opinions are available from the address below.

The Board is initiating certain amendments to Parts 810, 811, and 814 of its nonhazardous waste landfill regulations so as to make them at least as stringent as the USEPA regulations implementing Subtitle D of the Resource Conservation and Recovery Act(RCRA). The USEPA regulations address Municipal Solid Waste Landfill Facilities (MSWLF). The federal Subtitle D landfill regulations are found at 40 CFR 258. This rulemaking updates Illinois Nonhazardous Waste Landfill rules to correspond with the major federal rulemaking of October 9, 1991, at 56 Fed. Reg. 50978.

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The enabling State legislation, P.A. 88-512 and P.A. 88-496, contains a new Section 22.40 in the Environmental Protection Act (Act) which mandates Board rulemaking. This mandate requires that the Board adopt regulations pursuant to Section 7.2 of the Act that are identical in substance to regulations adopted by the USEPA to implement Sections 4004 and 4010 of the Resource Conservation and Recovery Act of 1976 (P.L. 94-580, codified as 42 U.S.C. §§ 6944 & 6950). Presently pending Section 22.40 of the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111½, par. 1022.40 [415 ILCS 5/22.40]), H.B. 299 provides that Section 5 of the Administrative Procedure Act shall not apply. Because this rulemaking is not subject to Section 5 of the APA, it is not subject to first notice or to second notice review by JCAR.

Specifically, the amendments to Part 814 include several changes and additions to existing standards applicable existing landfills in order to make them at least as stringent as the USEPA regulations implementing Subtitle D of the Resource Conservation and Recovery Act (RCRA). Briefly, the amendments clarify the applicability of Part 814 to existing municipal solid waste landfill (MSWLF) units and lateral expansions, set forth permitting requirements for existing MSWLF units and lateral expansions, and specify the additional requirements relating to the following standards: location standards; foundation and mass stability requirements; ground water impact assessment; liner and leachate collection systems; groundwater monitoring program; and groundwater quality standards.

16) Information and questions regarding this adopted rule shall be directed to:

Marie E. Tipsord
Illinois Pollution Control Board
100 W. Randolph St., Ste. 11-500
Chicago, IL 60610
312-814-4925

The full text of the adopted rule begins on the following page:

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TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER i: SOLID WASTE AND SPECIAL WASTE HAULING

PART 814

STANDARDS FOR EXISTING LANDFILLS AND UNITS

SUBPART A: GENERAL REQUIREMENTS

Section	
814.101	Scope and Applicability
814.102	Compliance Date
814.103	Notification to Agency
814.104	Applications for Significant Modification of Permits
814.105	Effect of Timely Filing of Notification and Application for Significant Modification
814.106	Agency Action on Applications for Significant Modifications to Existing Permits
814.107	Compliance Dates for Existing MSWLF Units
814.108	Interim Permit Requirements for Existing MSWLF Units
814.109	Permit Requirements for Lateral Expansions at Existing MSWLF Units

SUBPART B: STANDARDS FOR UNITS ACCEPTING INERT WASTE

Section	
814.201	Scope and Applicability
814.202	Applicable Standards

SUBPART C: STANDARDS FOR EXISTING UNITS ACCEPTING CHEMICAL AND OR PUTRESCIBLE WASTES THAT MAY REMAIN OPEN FOR MORE THAN SEVEN YEARS

Section	
814.301	Scope and Applicability
814.302	Applicable Standards

SUBPART D: STANDARDS FOR EXISTING UNITS ACCEPTING CHEMICAL AND OR PUTRESCIBLE WASTES THAT MUST INITIATE CLOSURE WITHIN SEVEN YEARS

Section	
814.401	Scope and Applicability
814.402	Applicable Standards

SUBPART E: STANDARDS FOR EXISTING UNITS ACCEPTING INERT WASTE ONLY, OR ACCEPTING CHEMICAL AND PUTRESCIBLE WASTES THAT MUST INITIATE CLOSURE WITHIN TWO YEARS

Section	
814.501	Scope and Applicability
814.502	Standards for Operation and Closure

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Section 814. Appendix A Additional Requirements for Existing MSWLF Units and Lateral Expansions Operating Under Permits Issued Pursuant to 35 Ill. Adm. Code 807.

AUTHORITY: Implementing Sections 5, 21, 21.1, 22, 22.17 and 28.1, and authorized by Section 27 of the Environmental Protection Act (Ill. Rev. Stat. 49891991, ch. 111 1/2, pars. 1005, 1021, 1021.1, 1022, 1022.17, 1028.1 and 1027 [415 ILCS 5/5, 5/21, 5/21.1, 5/22, 5/22.17, 5/28.1 and 5/27]).

SOURCE: Adopted in R88-7 at 14 Ill. Reg. 15850, effective September 18, 1990; amended in R93-10 at ___ Ill. Reg. _____, effective January 13, 1994.

NOTE: Capitalization indicates statutory language.

SUBPART A: GENERAL REQUIREMENTS

Section 814.101 Scope and Applicability

a) This Part establishes the standards applicable to all existing landfill facilities, which includes existing facilities that are not considered to be new as defined at 35 Ill. Adm. Code 810.103. The existing landfill facilities covered by this Part include existing MSWLF units and lateral expansions, as defined at 35 Ill. Adm. Code 810.103. This Part establishes requirements for both new and existing disposal units within such existing landfill facilities. Landfill owners or operators are required to determine the date on which their facilities must begin closure, which is dependent upon the ability of existing units to meet the design and performance standards contained in this Part.

b) All existing MSWLF units and lateral expansions shall be subject to the following standards:

- 1) An existing MSWLF unit or a lateral expansion operating under a permit modified pursuant to Section 814.104 shall comply with the standards prescribed in Subpart C or Subpart D, whichever is applicable.
- 2) An existing MSWLF unit or a lateral expansion operating under a permit issued pursuant to 35 Ill. Adm. Code 813 shall comply with the terms of

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the permit and the standards prescribed in Section 814. Subpart C for existing MSWLF units.

- 3) An existing MSWLF unit or a lateral expansion operating under a permit issued pursuant 35 Ill. Adm. Code 807 shall comply with the terms of the permit and the requirements specified in Section 814. Appendix A until the unit's permit is modified in accordance with Section 814.104.
- 4) An existing MSWLF unit or a lateral expansion that is newly required to obtain a permit under Section 21(d) of the Act on or after October 9, 1993 shall comply with the standards prescribed in Subpart C or Subpart D, whichever is applicable.

bc) The requirements of Sections 814.104, 814.105 and 814.106 of this Subpart apply only to those landfill facilities identified as existing facilities in subsection (a) and which require an Agency issued permit.

d) In addition to the requirements of subsection (c), an owner or operator of an existing MSWLF unit shall comply with the following:

- 1) Permit requirements specified in Sections 814.108 and 814.109; and
- 2) Any other applicable Federal rules, laws, regulations, or other requirements.

BOARD NOTE: Subsection (d)(2) is derived from 40 CFR 258.3 (1992).

eg) All general provisions of 35 Ill. Adm. Code 810 apply to this Part.

(Source: Amended in R93-10 at ___ Ill. Reg. _____, effective January 13, 1994)

Section 814.102 Compliance Date

Unless otherwise expressly provided in Sections 814.105 and 814.107, all landfills with existing units shall comply with the requirements of this Part within six months of the effective date of this Part.

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(Source: Amended in R93-10 at ___ Ill. Reg. ___, effective January 13, 1994)

Section 814.103 Notification to Agency

No later than six months after the effective date of this Part, all owners or operators shall send notification to the Agency describing the facility, estimated date of closure of existing units, and whether the facility is subject to the requirements of Subpart B, Subpart C, Subpart D, or Subpart E.

(Source: Amended in R93-10 at ___ Ill. Reg. ___, effective January 13, 1994)

Section 814.104 Applications for Significant Modification of Permits

a) All owners or operators of landfills permitted pursuant to Section 21(d) of the Environmental Protection Act (Act) (Ill. Rev. Stat. 1989/1991, ch. 111 1/2, par 1021(d) [415 ILCS 5/21(d)]) shall file an application for a significant modification to their permits for existing units, unless the units will be closed pursuant to Subpart E within two years of the effective date of this Part.

b) The owner or operator of an existing unit shall submit information required by 35 Ill. Adm. Code 812 to demonstrate compliance with Subpart B, Subpart C or Subpart D of this Part, whichever is applicable.

c) The application shall be filed within 48 months of the effective date of this Part, or at such earlier time as the Agency shall specify in writing pursuant to 35 Ill. Adm. Code 807.209 or 813.201(b).

d) The application shall be made pursuant to the procedures of 35 Ill. Adm. Code 813.

(Source: Amended in R93-10 at ___ Ill. Reg. ___, effective January 13, 1994)

Section 814.105 Effect of Timely Filing of Notification and Application for Significant Modification

a) Permits issued pursuant to 35 Ill. Adm. Code 807 prior to the effective date of this Part remain in full force and effect until superseded by a permit issued pursuant to this Part or until revoked as a result of an

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enforcement action brought pursuant to Title VIII of the Act.

b) An owner or operator who has timely filed a notification pursuant to Section 814.103 and an application for significant permit modification pursuant to Section 814.104 shall continue operation under the terms of its existing permits until final determination by the Agency on its application and any subsequent appeal to the Board pursuant to Section 40 of the Act. During this time, the owner or operator will be deemed to be in compliance with all requirements of this Part.

(Source: Amended in R93-10 at ___ Ill. Reg. ___, effective January 13, 1994)

Section 814.107 Compliance Dates for Existing MSWLF Units and Lateral Expansions

a) Except as specified in subsections (b) or (c), all existing MSWLF units and lateral expansions shall comply with the applicable requirements of this Part in accordance with Section 814.101(b) on or before October 9, 1993.

b) An existing MSWLF unit or a lateral expansion that meets the conditions of subsections (b)(1), (b)(2), and (b)(3) and receive waste after October 9, 1993, but stop receiving waste before April 9, 1994, is exempted from the additional requirements prescribed for existing MSWLF units and lateral expansions in this Part. The exemption conditions are as follows:

1) The unit accepted 100 tons per day or less of solid waste for disposal between October 9, 1991, and October 9, 1992.

2) The unit shall not accept more than 100 tons per day for disposal between October 9, 1993, and April 9, 1994.

3) The unit is not on the National Priority List (NPL) as found in 40 CFR 300 Appendix B.

c) An existing MSWLF unit or a lateral expansion of an existing unit is exempted from the additional requirements prescribed for MSWLF units in this Part until April 9, 1994, if the Agency determines that such

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a unit or lateral expansion is needed to receive flood-related waste.

BOARD NOTE: The compliance dates specified in subsections (a) and (b) reflect the revisions adopted by the USEPA in the Federal Register Notification published on October 1, 1993 (see 58 FR 51536).

(Source: Added in R93-10 at Ill. Reg. _____, effective _____ January 13, 1994.)

Section 814.108

Interim Permit Requirements for Existing
MSWLF Units

a) EXCEPT FOR A LATERAL EXPANSION OF AN EXISTING MSWLF UNIT REQUIRED TO RECEIVE A PERMIT MODIFICATION UNDER SECTION 21(t) OF THE ACT, BY SEPTEMBER 1, 1993, OR WITHIN 30 DAYS FOLLOWING THE EFFECTIVE DATE OF P.A. 88-496 (September 13, 1993), WHICHEVER OCCURS FIRST, THE OWNER OR OPERATOR OF AN EXISTING MSWLF UNIT SHALL SUBMIT TO THE AGENCY A WRITTEN APPLICATION FOR A PERMIT (IF NO PERMIT HAS BEEN ISSUED UNDER SECTION 21(g) OF THE ACT) OR A PERMIT MODIFICATION (IF A PERMIT HAS BEEN ISSUED UNDER SECTION 21(g) OF THE ACT) ON FORMS PRESCRIBED AND PROVIDED BY THE AGENCY.

b) PERSONS WHO SUBMIT AN APPLICATION FOR A PERMIT OR PERMIT MODIFICATION UNDER SUBSECTION (a) AND SECTION 22.42(a) OF THE ACT SHALL BE DEEMED TO HAVE AN INTERIM PERMIT OR INTERIM PERMIT MODIFICATION ON OCTOBER 9, 1993, OR 30 CALENDAR DAYS AFTER THE AGENCY RECEIVES THE APPLICATION UNDER SUBSECTION (a) ABOVE AND SECTION 22.42(a) OF THE ACT, WHICHEVER OCCURS FIRST, EXCEPT THAT:

- 1) THE AGENCY MAY IMPOSE SUCH CONDITIONS TO THE INTERIM PERMIT OR INTERIM PERMIT MODIFICATION LAW AS MAY BE NECESSARY TO ACCOMPLISH THE PURPOSES OF THE ACT AND AS ARE NOT INCONSISTENT WITH THE REGULATIONS DESCRIBED IN SECTION 22.41 OF THE ACT.
- 2) NO INTERIM PERMIT OR INTERIM PERMIT MODIFICATION SHALL BE DEEMED ISSUED UNDER THIS SUBSECTION AND SUBSECTION 22.42(b) OF THE ACT IF THE AGENCY PROVIDES WRITTEN NOTIFICATION TO THE APPLICANT, BY OCTOBER 1, 1993 OR WITHIN 30 CALENDAR DAYS AFTER THE AGENCY RECEIVES THE APPLICATION UNDER THIS SECTION, WHICHEVER OCCURS FIRST, THAT:

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- A) THE APPLICATION IS INCOMPLETE; OR
- B) THE APPLICANT MUST SUBMIT AN APPLICATION FOR A LATERAL EXPANSION PURSUANT TO SECTION 21(t) OF THE ACT.

C) AN INTERIM PERMIT OR AN INTERIM PERMIT MODIFICATION DEEMED ISSUED UNDER THIS SECTION AND SECTION 22.42 OF THE ACT TO AN EXISTING MSWLF UNIT SHALL EXPIRE UPON THE OCCURRENCE OF THE FOLLOWING, WHICHEVER OCCURS FIRST:

1) SIX CALENDAR YEARS FROM THE DATE UPON WHICH THE INTERIM PERMIT OR INTERIM PERMIT MODIFICATION WAS DEEMED TO BE ISSUED UNDER THIS SECTION AND SECTION 22.42 OF THE ACT, EXCEPT THAT IN THE EVENT THAT THE AGENCY IS REVIEWING AN APPLICATION FOR A PERMIT OR A SIGNIFICANT MODIFICATION OF A PERMIT FOR THE MSWLF UNIT, OR IN THE EVENT THAT A BOARD REVIEW OF A PERMIT DENIAL OR CONDITIONS OF A PERMIT OR SIGNIFICANT MODIFICATION OF THE PERMIT FOR THE MSWLF UNIT PURSUANT TO SECTION 40 OR 41 OF THE ACT IS PENDING AT THE END OF 6 CALENDAR YEAR PERIOD, THE INTERIM PERMIT OR INTERIM PERMIT MODIFICATION SHALL EXPIRE UPON THE ISSUANCE OF THE AGENCY'S FINAL ACTION ON THE APPLICATION OR UPON THE CONCLUSION OF THE BOARD PROCEEDING UNDER SECTIONS 40 OR 41 OF THE ACT, INCLUDING THE EXHAUSTION OF ALL RIGHTS OF APPEAL OF THE PARTIES TO THE PROCEEDING.

2) FINAL ACTION BY THE AGENCY ON AN APPLICATION FOR A PERMIT OR SIGNIFICANT MODIFICATION OF A PERMIT ON OR AFTER OCTOBER 9, 1993, FOR THE MSWLF UNIT WHERE THE AGENCY NOTIFIES THE APPLICANT THAT THE AGENCY'S REVIEW OF THE APPLICATION INCLUDED A REVIEW OF THE MSWLF UNIT'S COMPLIANCE WITH BOARD RULES ADOPTED UNDER SECTION 22.40 OR 22.41 OF THE ACT.

3) THE BOARD REVOKES THE INTERIM PERMIT OR THE INTERIM PERMIT MODIFICATION DEEMED ISSUED UNDER THIS SECTION AND SECTION 22.42 OF THE ACT IN AN ENFORCEMENT ACTION BROUGHT UNDER THE ACT. (Section 22.42 of the Act.)

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(Source: Added in R93-10 at ___ Ill. Reg. ___, effective January 13, 1994.)

Section 814.102 Permit Modification Requirements for Lateral
Expansions at Existing MSWLF Units

a) NO PERSON SHALL CAUSE OR ALLOW A LATERAL EXPANSION OF A MUNICIPAL SOLID WASTE LANDFILL UNIT ON OR AFTER OCTOBER 9, 1993, WITHOUT A PERMIT MODIFICATION, GRANTED BY THE AGENCY, THAT AUTHORIZES THE LATERAL EXPANSION.
(Section 21(t) of the Act.)

b) An owner or operator of an existing MSWLF unit seeking a lateral expansion shall submit to the agency an application for a permit modification using the forms specified by the Agency.

c) An owner or operator of an existing MSWLF unit operating under a permit modified pursuant to Section 814.104 shall submit the information required by 35 Ill. Adm. Code 811 and 812 to demonstrate compliance with the additional requirements prescribed for lateral expansions under Subpart C or Subpart D, whichever is applicable.

d) An owner or operator of an existing MSWLF unit operating under a permit issued pursuant to 35 Ill. Adm. Code 813 shall submit the information required by 35 Ill. Adm. Code 811 and 812 to demonstrate compliance with the additional requirements prescribed for existing MSWLF units under Section 814. Subpart C.

e) An owner or operator of an existing MSWLF unit operating in accordance with Section 814.105 under a permit issued pursuant 35 Ill. Adm. Code 807 shall submit the information required by Section 814. Appendix A to demonstrate compliance with the specific Subtitle D standards listed in Appendix A.

f) The application shall be made pursuant to the permit modification procedures of 35 Ill. Adm. Code 813 or 807, whichever is applicable.

BOARD NOTE: The Board envisions that the informational requirements for existing MSWLF units with permits issued pursuant to 35 Ill. Adm. Code 813 and 814 (subsections (c) and (d)) will be minimal, since most of the information required by Parts 811 and 812 would have been submitted to

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the Agency along with the application for a new permit or a significant modification of an existing permit.

(Source: Added in R93-10 at ___ Ill. Reg. ___, effective January 13, 1994.)

SUBPART C: STANDARDS FOR EXISTING UNITS ACCEPTING CHEMICAL AND OR PUTRESCIBLE WASTES THAT MAY REMAIN OPEN FOR MORE THAN SEVEN YEARS

Section 814.302 Applicable Standards

a) All of the requirements for new units described in 35 Ill. Adm. Code 811 shall apply to units regulated under this Subpart except the following:

- 1) The location standards in 35 Ill. Adm. Code 811.302(a), (d), and (e) and (f);
- 2) The foundation and mass stability analysis standards in 35 Ill. Adm. Code 811.304 and 811.305;
- 3) The final cover requirements of 35 Ill. Adm Code 811.314 shall not apply to units or parts of units closed, covered and vegetated prior to the effective date of this Part.

4) The liner and leachate drainage and collection requirements of 35 Ill. Adm. Code 811.306, 811.307, and 811.308; and

5) The hydrogeological site investigation requirements of 35 Ill. Adm. Code 811.315, except that information shall be collected to implement a groundwater monitoring program in accordance with 35 Ill. Adm. Code 811.318 and 811.319 and establish background concentrations for the purpose of establishing water quality standards pursuant to 35 Ill. Adm. Code 811.320; and

b) Units regulated under this Subpart shall be subject to the following standards:

- 1) The unit must be equipped with a system which will effectively drain and collect leachate and transport it to a leachate management system;

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- 2) The owner or operator shall provide a long-term static safety factor of at least 1.5 to protect a completed unit against slope failure;
- 3) Calculation of the Design Period
For the purposes of calculating financial assurance for existing landfills, other than existing MSWLF units and lateral expansions, the design period shall be calculated as follows:
 - A) The design period shall be no less than the operating life of the landfill plus fifteen years of postclosure care;
 - B) The postclosure care period shall be extended by three years for each year the unit is expected to be in operation up to the applicable design period required by 35 Ill. Adm. Code 811 (For example, an existing unit with expected operating lives of three, seven or 12 years after the effective date of this Part would be required to provide financial assurance during operation and for a postclosure care period of either 15 years since $3 \times 3 = 9$ years is less than the 15 year minimum specified in subsection (b) (3) (A); 21 years since $3 \times 7 = 21$ years; or 30 years since $3 \times 13 = 39$ years is greater than the 30 years specified in Section 811.303(a), respectively); and
 - C) The design period may not be reduced as allowed by 35 Ill. Adm. Code 811.303(b) and (c).

c) Airport Safety Requirements for existing MSWLF units and lateral expansions.

- 1) An owner or operator of an existing MSWLF unit or a lateral expansion that is located within 10,000 feet (3,048 meters) of any airport runway end used by turbojet aircraft or within 5,000 feet (1,524 meters) of any airport runway end used by only piston-type aircraft shall:
 - A) Demonstrate that the unit is designed and operated so that the MSWLF unit does not pose a bird hazard to aircraft; and

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- B) Place the demonstration required by subsection (c)(1)(A) of this section in the operating record and submit a copy of the demonstration to the Agency.
- 2) An owner or operator of an existing MSWLF unit seeking a lateral expansion within a five-mile radius of any airport runway end used by turbojet or piston-type aircraft shall notify the affected airport and the Federal Aviation Administration (FAA).
- 3) For purposes of this Section:
 - A) "Airport" means public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.
 - B) "Bird hazard" means an increase in the likelihood of bird/aircraft collisions that may cause damage to the aircraft or injury to its occupants.
- d) Notwithstanding any exemptions under subsection (a), existing MSWLF units shall be subject to the foundation and mass stability standards at 35 Ill. Adm. Code 811.304, 811.305 and 811.306(b).
- e) Notwithstanding any exemptions under subsection (a) or any requirements under subsection (b), lateral expansions at existing MSWLF units shall be subject to the following requirements:
 - 1) The foundation and mass stability standards at 35 Ill. Adm. Code 811.304 and 811.305;
 - 2) The liner and leachate drainage and collection requirements at 35 Ill. Adm. Code 811.306, 811.307, and 811.308; and
 - 3) The groundwater impact assessment requirements at 35 Ill. Adm. Code 811.317
- f) Existing MSWLF units that are unable to meet the location restrictions pertaining to floodplains and airports specified at Sections 814.302(a) and 814.302(c), or the foundation and mass stability

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standards specified at Section 814.302(d) shall close by October 9, 1996. Such units shall comply with all of the applicable standards of this Part including closure and postclosure care activities.

g) The deadline for closure of required by subsection (f) of this Section may be extended up to two years if the owner or operator of an existing MSWLF unit demonstrates to the Agency that:

- 1) There is no available alternative disposal capacity; and
- 2) There is no immediate threat to human health and the environment.

BOARD NOTE: Subsection (c) is derived from 40 CFR 258.10 (1992). Subsections (f) and (g) are derived from 40 CFR 258.16 (1992).

(Source: Amended in R93-10 at ___ Ill. Reg. _____, effective January 13, 1994)

SUBPART D: STANDARDS FOR EXISTING UNITS ACCEPTING CHEMICAL AND OR PUTRESCIBLE WASTES THAT MUST INITIATE CLOSURE WITHIN SEVEN YEARS

Section 814.402 Applicable Standards

- a) All of the requirements for new units described in 35 Ill. Adm. Code 811 shall apply to units regulated under this Subpart except the following:
 - 1) The location standards in 35 Ill. Adm. Code 811.302(a), (c), (d), and (e) and (f);
 - 2) The foundation and mass stability analysis standards in 35 Ill. Adm. Code 811.304 and 811.305;
 - 3) The liner and leachate drainage and collection requirements of 35 Ill. Adm. Code 811.306, 811.307, and 811.308;
 - 4) The final cover requirements of 35 Ill. Adm. Code 811.314 shall not apply to units or parts of units closed, covered and vegetated prior to the effective date of this Part;

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- 5) The hydrogeological site investigation requirements of 35 Ill. Adm. Code 811.315;
- 6) The groundwater impact assessment standards of 35 Ill. Adm. Code 811.317;
- 7) The groundwater monitoring program requirements of 35 Ill. Adm. Code 811.318(c); and
- 8) The groundwater quality standards of 35 Ill. Adm. Code 811.320(a), (b) and (c).

b) The following standards shall apply to units regulated under this Subpart:

- 1) No new units shall be opened and an existing unit may not expand beyond the area included in a permit prior to the effective date of this Part or, in the case of permit exempt facilities, beyond the area needed for landfilling to continue until closure is initiated.
- 2) After the effective date of this Part, the unit may not apply for supplemental wastewater permits to accept new special wastes. However, the unit may continue to accept special waste under permits existing prior to the effective date of this Part and may renew those permits as necessary.

3) Groundwater Standards

A unit shall not contaminate a source of drinking water at the compliance boundary, defined as any point on the edge of the unit at or below the ground surface. At any point on the compliance boundary, the concentration of constituents shall not exceed the water quality standards specified in 35 Ill. Adm. Code 302.301, 302.303, 302.304, and 302.305. The Board may provide for a zone of attenuation and adjust the compliance boundary in accordance with Section 28.1 of the Act and the procedures of 35 Ill. Adm. Code 106. Subpart G upon petition demonstration by the owner or operator that the alternative compliance boundary will not result in contamination of groundwater which may be needed or used for human consumption. In reviewing such petitions, the Board will consider the following factors:

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- A) The hydrogeological characteristics of the unit and surrounding land, including any natural attenuation and dilution characteristics of the aquifer;
- B) The volume and physical and chemical characteristics of the leachate;
- C) The quantity, quality, and direction of flow of groundwater underlying the facility;
- D) The proximity and withdrawal rates of groundwater users;
- E) The availability of alternative drinking water supplies;
- F) The existing quality of the groundwater, including other sources of contamination and their cumulative impacts on the groundwater;
- G) Public health, safety, and welfare effects; and
- H) In no case shall the zone of compliance extend beyond the facility property line or beyond the annual high water mark of any navigable surface water.
- I) Notwithstanding the limitations of subsection 814.402(b)(3)(H), in no case shall the zone of compliance at an existing MSWLF unit extend beyond 150 meters from the edge of the unit.

4) Calculation of the Design Period

- For the purposes of calculating financial assurance for existing landfills, other than existing MSWLF units and lateral expansions, the design period shall be calculated as follows:
- A) The design period shall be no less than five years; and
- B) The postclosure care period shall be extended by three years for each year the unit is expected to be in operation up to the applicable design period required by 35 Ill.

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- Adm. Code 811. (For example, an existing unit with an expected life of three years after the effective date of this Part would be required to provide financial assurance for nine years of postclosure care, $9 = 3 \times 3$.)
- C) The design period may not be reduced as allowed by 35 Ill. Adm. Code 811.303(b) and (c).
- c) Airport Safety Requirements for existing MSWLF units and lateral expansions.
- 1) An owner or operator of an existing MSWLF unit or a lateral expansion that is located within 10,000 feet (3,048 meters) of any airport runway end used by turbojet aircraft or within 5,000 feet (1,524 meters) of any airport runway end used by only piston-type aircraft shall:
- A) Demonstrate that the unit is designed and operated so that the MSWLF unit does not pose a bird hazard to aircraft; and
- B) Place the demonstration required by subsection (c)(1)(A) of this Section in the operating record and submit a copy of the demonstration to the Agency.
- 2) An owner or operator of an existing MSWLF unit seeking a lateral expansion within a five-mile radius of any airport runway end used by turbojet or piston-type aircraft shall notify the affected airport and the Federal Aviation Administration (FAA).
- 3) For purposes of this Section:
- A) "Airport" means public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.
- B) "Bird hazard" means an increase in the likelihood of bird/aircraft collisions that may cause damage to the aircraft or injury to its occupants.

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d) Notwithstanding any exemptions under subsection (b), existing MSWLF units shall be subject to the foundation and mass stability standards at 35 Ill. Adm. Code 811.304, 811.305, and 811.306(b).

e) Notwithstanding any exemptions under subsection (a) or any requirements under subsection (b), lateral expansions at existing MSWLF units shall be subject to the following requirements:

1) The foundation and mass stability standards at 35 Ill. Adm. Code 811.304 and 811.305;

2) The liner and leachate drainage and collection requirements at 35 Ill. Adm. Code 811.306, 811.307, and 811.308; and

3) The groundwater impact assessment requirements at 35 Ill. Adm. Code 811.317, if the unit is equipped with a compacted earth liner in accordance with Section 811.306(d).

4) The groundwater monitoring systems requirements at 35 Ill. Adm. Code 811.318;

5) The groundwater quality standards at 35 Ill. Adm. Code 811.320.

f) Existing MSWLF units that are unable to meet the location restrictions pertaining to floodplains and airports specified at Sections 814.302(a) and 302(c) following or the foundation and mass stability standards specified at Section 814.302(d) shall close by October 9, 1996. Such units shall comply with all of the applicable standards of this Part including closure and postclosure care activities.

g) The deadline for closure of required by subsection (f) of this section may be extended up to two years if the owner or operator of an existing MSWLF unit demonstrates to the Agency that:

1) There is no available alternative disposal capacity; and

2) There is no immediate threat to human health and the environment.

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BOARD NOTE: Subsection 814.402(b)(3)(H) implements the compliance zone distance requirement specified at 40 CFR 258.40(d) (1992). Subsection (c) is derived from 40 CFR 258.10. Subsections (f) and (g) are derived from 40 CFR 258.16 (1992).

(Source: Amended in R93-10 at ___ Ill. Reg. ___, effective January 13, 1994)

SUBPART E: STANDARDS FOR EXISTING UNITS ACCEPTING INERT WASTE ONLY, OR ACCEPTING CHEMICAL AND PUTRESCIBLE WASTES THAT MUST INITIATE CLOSURE WITHIN TWO YEARS

Section 814.501 Scope and Applicability

a) The standards in this Subpart are applicable to all existing units of landfills, including those exempt from permit requirements in accordance with Section 21(d) of the Act, that accept inert waste only, or which accept chemical and putrescible wastes.

b) All units that cannot demonstrate compliance with the requirements of Subpart B, or Subpart C or Subpart D are scheduled to begin closure within two years of the effective date of this Part must begin closure within two years of the effective date of this Part.

c) A new permit shall not be required for any facility at which all units will close within two years of the effective date of this Part.

(Source: Amended in R93-10 at ___ Ill. Reg. ___, effective January 13, 1994)

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Section 814. Appendix A

Additional Requirements for Existing
MSWLF Units and Lateral Expansions
Operating Under Permits Issued Pursuant
to 35 Ill. Adm. Code 807.

- a) An existing MSWLF unit operating under a permit issued pursuant to 35 Ill. Adm. Code 807 shall comply with the following requirements of the federal Subtitle D standards under 40 CFR 258 (1992) until the unit's permit is modified in accordance with Section 814.104:

1) Location restrictions:

- A) 40 CFR 258.10 (a) and (c);
- B) 40 CFR 258.11 (a);
- C) 40 CFR 258.15;
- D) 40 CFR 258.16 (a);

2) Operating standards:

- A) 40 CFR 258.20;
- B) 40 CFR 258.23;
- C) 40 CFR 258.26;
- D) 40 CFR 258.27;
- E) 40 CFR 258.28;
- F) 40 CFR 258.29 (a) and (c);

3) Closure and postclosure care:

- A) 40 CFR 258.60 (c)(2) and (c)(3), (d), (f), (g) and (i);
- B) 40 CFR 258.61 (a), (c)(3) and (d);

4) Financial assurance requirements:

- A) 40 CFR 258.70 (a);
- B) 40 CFR 258.71 (a)(2);

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- C) 40 CFR 258.72 (a)(1) and (a)(2);
- D) 40 CFR 258.73; and
- E) 40 CFR 258.74.

- b) In addition to the requirements of subsection (a), all existing MSWLF units, including municipally owned and operated on-site facilities, shall comply with the financial assurance requirements specified at 35 Ill. Adm. Code 807. Subpart F.

- c) A lateral expansion at an existing MSWLF unit operating under a permit issued pursuant to 35 Ill. Adm. Code 807 shall comply with the following requirements of the federal Subtitle D standards under 40 CFR 258 (1992) until the unit's permit is modified in accordance with Section 814.104:

1) Location restrictions:

- A) 40 CFR 258.10 (a), (b) and (c);
- B) 40 CFR 258.11 (a);
- C) 40 CFR 258.12 (a);
- D) 40 CFR 258.13;
- E) 40 CFR 258.14;
- F) 40 CFR 258.15;
- G) 40 CFR 258.16 (a);

2) Operating standards:

- A) 40 CFR 258.20;
- B) 40 CFR 258.23;
- C) 40 CFR 258.26;
- D) 40 CFR 258.27;
- E) 40 CFR 258.28;
- F) 40 CFR 258.29 (a) and (c);

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- 3) Closure and postclosure care:
- A) 40 CFR 258.60 (c)(2) and (c)(3), (d), (f), (g) and (i);
- B) 40 CFR 258.61 (a), (c)(3) and (d);
- 4) Financial assurance requirements:
- A) 40 CFR 258.70 (a);
- B) 40 CFR 258.71 (a)(2);
- C) 40 CFR 258.72 (a)(1) and (a)(2);
- D) 40 CFR 258.73; and
- E) 40 CFR 258.74.
- c) In addition to the requirements of subsection (b) of this appendix, a lateral expansion at an existing MSWLF unit operating under a permit issued pursuant to 35 Ill. Adm. Code 807 shall comply with the following requirements:
- 1) Flexible membrane liner requirements prescribed at 35 Ill. Adm. Code 811.306 (d)(5)(A); and
- 2) All existing MSWLF units including municipally owned and operated and on-site facilities shall with the financial assurance requirements specified at 35 Ill. Adm. Code 807, Subpart F.

(Source: Added in R93-10 at ___ Ill. Reg. ___, effective ___ January 13, 1994)

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- 1) Heading of the Part: STANDARDS FOR NEW SOLID WASTE LANDFILLS
- 2) Code Citation: 35 Ill. Adm. Code 811
- 3) Section Numbers: Adopted Action:
- | | |
|------------|----------------|
| 811.101 | Amendment |
| 811.107 | Amendment |
| 811.110 | Amendment |
| 811.111 | Amendment |
| 811.112 | New Section |
| 811.302 | Amendment |
| 811.303 | Amendment |
| 811.309 | Amendment |
| 811.310 | Amendment |
| 811.311 | Amendment |
| 811.314 | Amendment |
| 811.318 | Amendment |
| 811.319 | Amendment |
| 811.320 | Amendment |
| 811.323 | Amendment |
| 811.324 | New Section |
| 811.325 | New Section |
| 811.326 | New Section |
| 811.700 | Amendment |
| 811.701 | Amendment |
| 811.702 | Amendment |
| 811.703 | Amendment |
| 811.704 | Amendment |
| 811.705 | Amendment |
| 811.706 | Amendment |
| 811.707 | Amendment |
| 811.708 | Amendment |
| 811.709 | Amendment |
| 811.710 | Amendment |
| 811.711 | Amendment |
| 811.712 | Amendment |
| 811.713 | Amendment |
| 811.714 | Amendment |
| 811.715 | Amendment |
| 811.App. A | Illustration A |
| 811.App. A | Illustration C |
| 811.App. A | Illustration D |
| 811.App. A | Illustration E |
| 811.App. B | New Section |

- 4) Statutory Authority: Implementing Sections 5, 21, 21.1, 22, 22.17, 22.40 and 28.1, and authorized by Section 27 of the

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Environmental Protection Act as amended by P.A. 88-512 and 88-496 (Ill. Rev. Stat. 1991, ch. 111 1/2, pars. 1005, 1021, 1021.1, 1022, 1022.17, 1022.40, 1028.1 and 1027 [415 ILCS 5/5, 5/21, 5/21.1, 5/22, 5/22.17, 5/22.40, 5/28.1 and 5/27]).

- 5) Effective Date of Rule(s): January 13, 1994
- 6) Does this rulemaking contain an automatic repeal date?: No
- 7) Does this rule contain incorporations by reference? No
- 8) Date filed in Board's principal office: December 17, 1993
- 9) Notice of Proposal Published in Illinois Register:
17 Ill. Reg. 8714, June 18, 1993
- 10) Has JCAR issued a Statement of Objections to these rules? No
Section 22.40 of the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111½, par. 1022.40 [415 ILCS 5/22.40]) as amended by P.A. 88-512 and 88-496 provides that Section 5 of the Administrative Procedure Act shall not apply. Because this rulemaking is not subject to Section 5 of the APA, it is not subject to first notice or to second notice review by JCAR.
- 11) Differences between proposal and final version:

Section 811.101: The Board has added a requirement at Section 811.101(d)(3) that requires an owner or operator of a MSWLF unit to comply with other applicable federal laws, regulations or requirements.

Section 811.110: The Board has corrected a typographical error in this Section. The terms "subsection (g)" has been corrected to read as "subsection (e)" in Section 811.110(f)(1).

Section 811.111: Section 811.111(c)(1)(C) has been amended to clarify the postclosure care requirements. These amendments specify the requirements that must be met by an owner or operator to seek a reduction of the postclosure care period.

Section 811.112: The Board has amended Section 811.112 to include additional recordkeeping requirements for MSWLF units.

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Section 811.303: The Board has amended the requirements concerning the reduction of postclosure care period at Section 811.303(d). The final regulations require an owner or operator seeking an over-all reduction of the postclosure care period to petition the Board for an adjusted standard pursuant to Section 28.1 of the Act.

Section 811.309: The Board has specified additional leachate management requirements applicable to MSWLF units at Section 811.309(h). The additional requirements specify the minimum time of operation of the leachate management system.

Section 811.310: The Board has specified additional gas monitoring requirements applicable to MSWLF units at Section 811.310(c). These additional requirements specify the minimum time of operation of the gas monitoring system at MSWLF units.

Section 811.311: The Board has specified at Section 811.311(b) the actions that must be taken by an owner or operator of a MSWLF unit in the event of an exceedance of methane gas limits.

Section 811.314: The Board has added a requirement applicable to MSWLF units at Section 811.314(b)(4). This addition requires the permeability of the low permeability layer of the final cover to be less than or equal to the permeability of the bottom liner system, whenever the bottom liner permeability is less than 1×10^{-7} cm/sec.

Section 811.318: The final regulations include additional sampling and analysis requirements at Section 811.318(e)(7). Each time groundwater is sampled, these additions require an owner or operator to measure the ground water elevation in each well, and determine the rate and direction of groundwater flow.

Section 811.319: The adopted regulations include minor clarifying changes at Section 811.319 (a)(1)(A) and (a)(1)(C). The Board has added additional requirements at Section 811.319(a)(1)(D) and (a)(1)(E), which specify conditions for reducing the minimum groundwater monitoring period at MSWLF units. The Board has specified additional assessment monitoring requirements applicable to MSWLF units at Section 811.319(b)(5). Section 811.319(b)(5)(D) requires an owner or operator to monitor the constituents listed in 40 CFR 258-Appendix II on a semi-annual basis. Section 811.319(b)(5)(E) allows an owner or operator to request the

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Agency to delete certain constituents from the monitoring list. Section 811.319(b)(5)(g) sets forth the criteria for terminating the additional assessment monitoring requirements applicable to MSWLF units.

Section 811.320: The adopted regulations include concentration limits for a list constituents at Section 811.320(b)(3). The Board must not exceed the specified limits when granting any adjusted groundwater quality standards for MSWLF units.

Section 811.326: The Board has added the definition of the term "qualified groundwater scientist" at Section 811.326(c)(5). The Board has also made some clarifying changes at Section 811.326(f).

The Board has also amended the following Sections under this Part in response to comments: Section 811.700, Section 811.701, Section 811.704, Section 811.706, Section 811.707, Section 811.710, Section 811.711, Section 811.712, Section 811.713, Section 811.714, Section 811.715, Appendix A, Illustration A, Illustration C, Illustration D, Illustration E

Appendix B was added to indicate the correlation between the Board's regulations and the Code of Federal Regulations

12) Have all the changes agreed upon by the Board and JCAR been made as indicated in the agreement letter issued by JCAR?

Section 22.40 of the Environmental Protection Act as amended by P.A. 88-512 and 88-496 provides that Section 5 of the Administrative Procedure Act shall not apply. Because this rulemaking is not subject to Section 5 of the APA, it is not subject to first notice or to second notice review by JCAR.

13) Will this rule replace an emergency rule currently in effect? No

14) Are there any other amendments pending on this Part? No

15) Summary and purpose of Rule:

A more detailed description is contained in the Board's opinions issued on June 3, 1993, September 16, 1993, and December 16, 1993, in R93-10, those Opinions are available from the address below.

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The Board is initiating certain amendments to Parts 810, 811, and 814 of its nonhazardous waste landfill regulations so as to make them at least as stringent as the USEPA regulations implementing Subtitle D of the Resource Conservation and Recovery Act (RCRA). The USEPA regulations address Municipal Solid Waste Landfill Facilities (MSWLF). The federal Subtitle D landfill regulations are found at 40 CFR 258. This rulemaking updates Illinois Nonhazardous Waste Landfill rules to correspond with the major federal rulemaking of October 9, 1991, at 56 Fed. Reg. 50978.

The enabling State legislation, HB 299, contains a new Section 22.40 in the Environmental Protection Act (Act) which mandates Board rulemaking. This mandate requires that the Board adopt regulations pursuant to Section 7.2 of the Act that are identical in substance to regulations adopted by the USEPA to implement Sections 4004 and 4010 of the Resource Conservation and Recovery Act of 1976 (P.L. 94-580, codified as 42 U.S.C. §§ 6944 & 6950). Presently pending Section 22.40 of the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111½, par. 1022.40 [415 ILCS 5/22.40], H.B. 299) provides that Section 5 of the Administrative Procedure Act shall not apply. Because this rulemaking is not subject to Section 5 of the APA, it is not subject to first notice or to second notice review by JCAR.

Specifically, the amendments to Part 811 include several changes and additions to the existing standards applicable new landfills in order to make them at least as stringent as the USEPA regulations implementing Subtitle D of the Resource Conservation and Recovery Act (RCRA). Briefly, the amendments clarify the applicability of Part 811 to new MSWLF units and specify the additional requirements relating to the following standards:

- (i) Location standards: restricts locating new MSWLF units near airports.
- (ii) Operating standards: restricts disposal of liquids in new MSWLF units.
- (iii) Closure plan: specifies time restriction for initiating and completing closure.
- (iv) Postclosure care: extends postclosure care period.
- (v) Recordkeeping: requires maintenance of operating record on site.
- (vi) Groundwater monitoring and corrective action: additional requirements relating to detection monitoring, assessment monitoring, and remedial action.

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- (vii) Financial assurance: expands the scope of the provisions to include local governments and requires financial assurance for corrective action.

- 16) Information and questions regarding this adopted rule shall be directed to:

Marie E. Tipsord
Illinois Pollution Control Board
100 W. Randolph St., Ste. 11-500
Chicago, IL 60610
312-814-4925

The full text of the adopted rule begins on the following page:

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TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER i: SOLID WASTE AND SPECIAL WASTE HAULING

PART 811
STANDARDS FOR NEW SOLID WASTE LANDFILLS

SUBPART A: GENERAL STANDARDS FOR ALL LANDFILLS

Section	
811.101	Scope and Applicability
811.102	Location Standards
811.103	Surface Water Drainage
811.104	Survey Controls
811.105	Compaction
811.106	Daily Cover
811.107	Operating Standards
811.108	Salvaging
811.109	Boundary Control
811.110	Closure and Written Closure Plan
811.111	Postclosure Maintenance

SUBPART B: INERT WASTE LANDFILLS

Section	
811.201	Scope and Applicability
811.202	Determination of Contaminated Leachate
811.203	Design Period
811.204	Final Cover
811.205	Final Slope and Stabilization
811.206	Leachate Sampling
811.207	Load Checking

SUBPART C: PUTRESCIBLE AND CHEMICAL WASTE LANDFILLS

Section	
811.301	Scope and Applicability
811.302	Facility Location
811.303	Design Period
811.304	Foundation and Mass Stability Analysis
811.305	Foundation Construction
811.306	Liner Systems
811.307	Leachate Drainage System
811.308	Leachate Collection and Disposal System
811.309	Leachate Treatment and Disposal System
811.310	Landfill Gas Monitoring
811.311	Landfill Gas Management System
811.312	Landfill Gas Processing and Disposal System
811.313	Intermediate Cover
811.314	Final Cover System
811.315	Hydrogeological Site Investigations

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811.316 Plugging and Sealing of Drill Holes
811.317 Groundwater Impact Assessment
811.318 Design, Construction, and Operation of Groundwater Monitoring Systems
811.319 Groundwater Monitoring Programs
811.320 Groundwater Quality Standards
811.321 Waste Placement
811.322 Final Closure and Stabilization
811.323 Load Checking Program
811.324 Corrective Action Measures for MSWLF Units
811.325 Selection of remedy for MSWLF Units
811.326 Implementation of the corrective action program at MSWLF Units

SUBPART D: MANAGEMENT OF SPECIAL WASTES AT LANDFILLS

Section
811.401 Scope and Applicability
811.402 Notice to Generators and Transporters
811.403 Special Waste Manifests
811.404 Identification Record
811.405 Recordkeeping Requirements
811.406 Procedures for Excluding Regulated Hazardous Wastes

SUBPART E: CONSTRUCTION QUALITY ASSURANCE PROGRAMS

Section
811.501 Scope and Applicability
811.502 Duties and Qualifications of Key Personnel
811.503 Inspection Activities
811.504 Sampling Requirements
811.505 Documentation
811.506 Foundations and Subbases
811.507 Compacted Earth Liners
811.508 Geomembranes
811.509 Leachate Collection Systems

SUBPART G: FINANCIAL ASSURANCE

Section
811.700 Scope, Applicability and Definitions
811.701 Upgrading Financial Assurance
811.702 Release of Financial Institution
811.703 Application of Proceeds and Appeals
811.704 Closure and Postclosure Care Cost Estimates
811.705 Revision of Cost Estimate
811.706 Mechanisms for Financial Assurance
811.707 Use of Multiple Financial Mechanisms
811.708 Use of a Financial Mechanism for Multiple Sites
811.709 Trust Fund for Unrelated Sites
811.710 Trust Fund
811.711 Surety Bond Guaranteeing Payment

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b) This Part shall not apply until one year after the effective date of this Part to new landfills solely receiving the following wastes generated by the following industries, provided that proposed regulations of general applicability to that industry category are filed with the Board no later than December 1, 1990: wastes generated by foundries and primary steel production facilities and coal combustion wastes generated by electric utilities. The requirements of 35 Ill. Adm. Code 807 shall apply to such landfills during the interim period of one year after the effective date of this Part. This Part shall become effective immediately after Dec. 1, 1990 if no proposal has been filed by that date.

c) All general provisions of 35 Ill. Adm. Code 810 apply to this Part.

d) Standards for Municipal Solid Waste Landfills

1) The standards of this Part also apply to all new MSWLF units, as defined at 35 Ill. Adm. Code 810.103. The standards for the new MSWLF units include:

- A) The standards applicable to new landfills pursuant to subsection (a); and
 - B) The standards adopted in this part that are identical-in-substance to the federal regulations promulgated by the U.S. Environmental Protection Agency pursuant to MSWLF program. Such standards are individually indicated as applicable to MSWLF units.
- 2) The Appendix Table 811. Appendix B provides a Section-by-Section correlation between the requirements of the federal MSWLF regulations at 40 CFR 258 (1992) and the requirements of this Part.
- 3) An owner or operator of a MSWLF unit shall also comply with any other applicable Federal rules, laws, regulations, or other requirements.

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- 811.712 Surety Bond Guaranteeing Performance
811.713 Letter of Credit
811.714 Closure Insurance
811.715 Self-Insurance for Non-commercial Sites

811. Appendix A Financial Assurance Forms

- Illustration A Trust Agreement
Illustration B Certificate of Acknowledgment
Illustration C Forfeiture Bond
Illustration D Performance Bond
Illustration E Irrevocable Standby Letter of Credit
Illustration F Certificate of Insurance for Closure and/or Postclosure Care
Illustration G Operator's Bond Without Surety
Illustration H Operator's Bond With Parent Surety
Illustration I Letter from Chief Financial Officer

811. Appendix B Section-by-Section Correlation Between the Requirements of the Federal MSWLF Regulations at 40 CFR 258 (1992) and the Requirements of Parts 810 through 814.

AUTHORITY: Implementing Sections 5, 21, 21.1, 22, 22.17 and 28.1 and authorized by Section 27 of the Environmental Protection Act (Ill. Rev. Stat. ~~1989~~1991, ch. 111 1/2, pars. 1005, 1021, 1021.1, 1022, 1022.17, 1028.1 and 1027 [415 ILCS 5/5, 5/21, 5/21.1, 5/22, 5/22.17, 5/28.1 and 5/27].

SOURCE: Adopted in R88-7 at 14 Ill. Reg. 15861, effective September 18, 1990; amended in R92-19 at 17 Ill. Reg. 12413, effective July 19, 1993; amended in R93-10 at ___ Ill. Reg. ___, effective January 13, 1994.

NOTE: Capitalization indicates statutory language.

SUBPART A: GENERAL STANDARDS FOR ALL LANDFILLS

Section 811.101 Scope and Applicability

- a) The standards of this Part apply to all new landfills, except those regulated pursuant to 35 Ill. Adm. Code 700 through 749. Subpart A contains general standards applicable to all new landfills. Subpart B contains additional standards for new landfills which dispose of only inert wastes. Subpart C contains additional standards for new landfills which dispose of chemical and putrescible wastes.

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BOARD NOTE: Subsection (d)(3) is derived from 40 CFR 258.3 (1992).

(Source: Amended in R93-10 at ___ Ill. Reg. ___, effective January 13, 1994)

Section 811.107 Operating Standards

a) Phasing of Operations

- 1) Waste shall be placed in a manner and at such a rate that mass stability is provided during all phases of operation. Mass stability shall mean that the mass of the waste deposited will not undergo settling or slope failure that interrupts operations at the facility or causes damage to any of the various landfill operations or structures, such as the liner, leachate or drainage collection system, gas collection system or monitoring system.

- 2) The phasing of operations at the facility shall be designed in such a way as to allow the sequential construction, filling, and closure of discrete units or parts of units.

- 3) The operator shall design and sequence the waste placement operation in each discrete unit or parts of units, in conjunction with the overall operations of the facility, so as to shorten the operational phase and allow wastes to be built up to the planned final grade.

b) Size and Slope of Working Face

- 1) The working face of the unit shall be no larger than is necessary, based on the terrain and equipment used in waste placement, to conduct operations in a safe and efficient manner.

- 2) The slopes of the working face area shall be no steeper than two to one (horizontal to vertical) unless the waste is stable at steeper slopes.

c) Equipment

Equipment shall be maintained and available for use at the facility during all hours of operation, so as to

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achieve and maintain compliance with the requirements of this Part.

d) Utilities

All utilities, including but not limited to heat, lights, power and communications equipment, necessary for safe operation in compliance with the requirements of this Part shall be available at the facility at all times.

e) Maintenance

The operator shall maintain and operate all systems and related appurtenances and structures in a manner that facilitates proper operations in compliance with this Part.

f) Open Burning

Open burning is prohibited except in accordance with 35 Ill. Adm. Code 200 through 245.

g) Dust Control

The operator shall implement methods for controlling dust so as to prevent wind dispersal of particulate matter.

h) Noise Control

The facility shall be designed, constructed and maintained to minimize the level of equipment noise audible outside the facility. The facility shall not cause or contribute to a violation of 35 Ill. Adm. Code 900 through 905 or of Section 24 of the Act.

i) Vector Control

The operator shall implement measures to control the population of disease and nuisance vectors.

j) Fire Protection

The operator shall institute fire protection measures including, but not limited to, maintaining a supply of water on-site and radio or telephone access to the nearest fire department.

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k) Litter Control

- 1) The operator shall patrol the facility daily to check for litter accumulation. All litter shall be collected and placed in the fill or in a secure, covered container for later disposal.
- 2) The facility shall not accept solid waste from vehicles that do not utilize devices such as covers or tarpaulins to control litter, unless the nature of the solid waste load is such that it cannot cause any litter during its transportation to the facility.

l) Mud Tracking

The facility shall implement methods, such as use of wheel washing units, to prevent tracking of mud by hauling vehicles onto public roadways.

m) Liquids Restrictions for MSWLF units

- 1) Bulk or noncontainerized liquid waste may not be placed in MSWLF units unless:

A) The waste is household waste other than septic waste; or

B) The waste is leachate or gas condensate derived from the MSWLF unit and the MSWLF unit, whether it is a new or existing MSWLF unit or lateral expansion, is designed with a composite liner and leachate collection system that complies with the requirements of Sections 811.306 through 811.309.

- 2) Containers holding liquid waste may not be placed in a MSWLF unit unless:

A) The container is a small container similar in size to that normally found in household waste;

B) The container is designed to hold liquids for use other than storage; or

C) The waste is household waste.

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3) For purposes of this Section:

- A) "Liquid waste" means any waste material that is determined to contain "free liquids" as defined by Method 9095 (Paint Filter Liquids Test), as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Pub. No. SW-846) incorporated by reference in 35 Ill. Adm Code 810.104.
- B) "Gas condensate" means the liquid generated as a result of gas recovery processes at the MSWLF unit.

BOARD NOTE: Subsection 811.107(m) is derived from 40 CFR 258.28 (1992).

(Source: Amended in R93-10 at ___ Ill. Reg. _____, effective January 13, 1994)

Section 811.110 Closure and Written Closure Plan

- a) The final slopes and contours shall be designed to complement and blend with the surrounding topography of the proposed final land use of the area.
- b) All drainage ways and swales shall be designed to safely pass the runoff from the 100-year, 24-hour precipitation event without scouring or erosion.
- c) The final configuration of the facility shall be designed in a manner that minimizes the need for further maintenance.
- d) Written closure plan

- 1) The operator shall maintain a written plan describing all actions that the operator will undertake to close the unit or facility in a manner that fulfills the provisions of the Act, of this Part and of other applicable Parts of 35 Ill. Adm. Code: Chapter I. The written closure plan shall fulfill the minimum information requirements of 35 Ill. Adm. Code 812.114.

- 2) A modification of the written closure plan shall constitute a significant modification of the

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permit for the purposes of 35 Ill. Adm. Code 813.Subpart B.

- 3) In addition to the informational requirements of subsection 811.110(d)(1), an owner or operator of a MSWLF unit shall include the following information in the written closure plan:

- A) An estimate of the largest area of the MSWLF unit ever requiring a final cover, as required by Section 811.314, at any time during the active life; and
- B) An estimate of the maximum inventory of wastes ever on-site over the active life of the landfill facility.

BOARD NOTE: Subsection 811.110(d)(3) is derived from 40 CFR 258.60 (c)(1) and (c)(2) (1992).

e) The owner or operator of a MSWLF unit shall begin closure activities for each MSWLF unit no later than the date determined as follows:

- 1) 30 days after the date on which the MSWLF unit receives the final receipt of wastes; or
- 2) If the MSWLF unit has remaining capacity and there is a reasonable likelihood that the MSWLF unit will receive additional wastes, no later than one year after the most recent receipt of wastes.
- 3) The Agency shall grant extensions beyond this one-year deadline for beginning closure if the owner or operator demonstrates that:

- A) The MSWLF unit has the capacity to receive additional wastes; and
- B) The owner or operator has taken and will continue to take all steps necessary to prevent threats to human health and the environment from the unclosed MSWLF unit.

BOARD NOTE: Subsection (e) is derived from 40 CFR 258.60(f) (1992).

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f) The owner or operator of a MSWLF unit shall complete closure activities for each unit in accordance with the closure plan no later than the dates determined as follows:

- 1) Within 180 days of beginning closure, as specified in subsection (e) of this Section.
- 2) The Agency shall grant extension of the closure period if the owner or operator demonstrates that:
 - A) The closure will, of necessity, take longer than 180 days; and
 - B) The owner or operator has taken and will continue to take all necessary steps to prevent threats to human health and the environment from the unclosed MSWLF unit.

BOARD NOTE: Subsection (e) is derived from 40 CFR 258.60(g) (1992).

g) Deed notation.

- 1) Following closure of all MSWLF units at a site, the owner or operator shall record a notation on the deed to the landfill facility property or some other instrument that is normally examined during title search. The owner or operator shall place a copy of the instrument in the operating record, and shall notify the Agency that the notation has been recorded and a copy has been placed in the operating record.
- 2) The notation on the deed or other instrument must be made in such a way that in perpetuity notify any potential purchaser of the property that:

- A) The land has been used as a landfill facility; and
- B) Its use is restricted pursuant to Section 811.111(d).

BOARD NOTE: Subsection (g) is derived from 40 CFR 258.60(i) (1992).

h) The Agency shall allow the owner or operator of a MSWLF unit to remove the notation from the deed only if the

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owner or operator demonstrates to the Agency that all wastes are removed from the facility.

BOARD NOTE: Subsection (h) is derived from 40 CFR 258.60(i) (1992).

(Source: Amended in R93-10 at Ill. Reg. _____, effective January 13, 1994)

Section 811.111 Postclosure Maintenance

- a) The operator shall treat, remove from the site, or dispose of all wastes and waste residues within 30 days after receipt of the final volume of waste.
- b) The operator shall remove all equipment or structures not necessary for the postclosure land use, unless otherwise authorized by permit.
- c) Maintenance and Inspection of the Final Cover and Vegetation:

1) Frequency of Inspections

- A) The operator shall conduct a quarterly inspection of all vegetated surfaces for a minimum of five years after closure, and after five years, the operator may reduce the frequency of annual inspections until settling has stopped and there are no eroded or scoured areas.
- B) For landfills, other than those used exclusively for disposing waste generated at the site, inspections shall be continued for a minimum period of 15 years after closure.
- C) For MSWLF units, inspections performed in accordance with subsection (c)(1)(A) shall be continued for a minimum period of 30 years after closure, except as otherwise provided by subsections (c)(1)(D) and (c)(1)(E), below.
- D) The Agency may reduce the inspection and maintenance period at a MSWLF unit upon a demonstration by the owner or operator that the reduced period is sufficient to protect human health and environment.

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E) The owner or operator of a MSWLF unit shall petition the Board for an adjusted standard in accordance with Section 811.303, if the owner or operator seeks a reduction of the postclosure care monitoring period for all of the following requirements:

- i) Inspection and maintenance (Section 811.111);
- ii) Leachate collection (Section 811.309);
- iii) Gas monitoring (Section 811.310); and
- iv) Groundwater monitoring (Section 811.319).

2) All rills, gullies and crevices six inches or deeper identified in the inspection shall be filled. Areas identified by the operator or the Agency inspection as particularly susceptible to erosion shall be recontoured.

3) All eroded and scoured drainage channels shall be repaired and lining material shall be replaced if necessary.

4) All holes and depressions created by settling shall be filled and recontoured so as to prevent standing water.

5) All reworked surfaces, and areas with failed or eroded vegetation in excess of 100 square feet cumulatively, shall be revegetated in accordance with the approved closure plan for the facility.

d) Planned uses of property at MSWLF units

1) The owner or operator of a MSWLF unit shall include a description of the planned uses of the property during the postclosure care period in the written postclosure care plan prepared pursuant to 35 Ill. Adm. Code 812.115.

2) Postclosure use of the property must not disturb the integrity of the final cover, liner, any other components of the containment system, or the function of the monitoring systems, unless

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necessary to comply with the requirements of this Part.

3) The Agency shall approve any other disturbance if the owner or operator demonstrates that the disturbance of the final cover, liner or other component of the containment system, including any removal of waste, will not increase the potential threat to human health or the environment.

BOARD NOTE: Subsection (d) is derived from 40 CFR 258.61(c)(3) (1992).

(Source: Amended in R93-10 at ___ Ill. Reg. ___, effective January 13, 1994)

Section 811.112 Recordkeeping Requirements for MSWLF Units

The owner or operator of a MSWLF unit shall record and retain near the facility in an operating record or in some alternative location specified by the Agency, the information submitted to the Agency pursuant to 35 Ill. Adm. Code 812 and 813, as it becomes available. At a minimum, the operating record shall contain the following information, even if such information is not required by 35 Ill. Adm. Code 812 or 813:

a) Any location restriction demonstration required by Section 811.302(e) and 35 Ill. Adm. Code 812.109, 812.110, 812.303 and 812.305;

b) Inspection records, training procedures, and notification procedures required by Section 811.323;

c) Gas monitoring results and any remediation plans required by Sections 811.310 and 811.311;

d) Any MSWLF unit design documentation for placement of leachate or gas condensate in a MSWLF unit required by Section 811.107(m);

e) Any demonstration, certification, monitoring results, testing, or analytical data relating to the groundwater monitoring program required by Sections 811.319, 811.324, 811.325, and 811.326 and 35 Ill. Adm. Code 812.317, 813.501 and 813.502;

f) Closure and post-closure care plans and any monitoring, testing, or analytical data required by Sections

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811.110 and 811.111, and 35 Ill. Adm. Code 812.114(h), 812.115 and 812.313; and

- g) Any cost estimates and financial assurance documentation required by Subpart G of this Part.

BOARD NOTE: The requirements of this Section are derived from 40 CFR 258.29 (1992).

(Source: Added in R93-10 at ___ Ill. Reg. ___, effective January 13, 1994)

SUBPART C: PUTRESCIBLE AND CHEMICAL WASTE LANDFILLS

Section 811.302 Facility Location

- a) No part of a unit shall be located within a setback zone established pursuant to Section 14.2 or 14.3 of the Act;
- b) No part of a unit shall be located within the recharge zone or within 366 meters (1200 feet), vertically or horizontally, of a sole-source aquifer designated by the United States Environmental Protection Agency pursuant to Section 1424(e) of the Safe Drinking Water Act (42 U.S.C. 300f et. seq.) unless there is a stratum between the bottom of the waste disposal unit and the top of the aquifer that meets the following minimum requirements:

- 1) The stratum has a minimum thickness of 15.2 meters (50 feet);
- 2) The maximum hydraulic conductivity in both the horizontal and vertical directions is no greater than 1×10^{-7} centimeters per second, as determined by in situ borehole or equivalent tests;
- 3) There is no indication of continuous sand or silt seams, faults, fractures or cracks within the stratum that may provide paths for migration; and
- 4) Age dating of extracted water samples from both the aquifer and the stratum indicates that the time of travel for water percolating downward through the relatively impermeable stratum is no faster than 15.2 meters (50 feet) in 100 years.

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- c) A facility located within 152 meters (500 feet) of the right of way of a township or county road or state or interstate highway shall have its operations screened from view by a barrier of natural objects, fences, barricades, or plants no less than 2.44 meters (8 feet) in height.
- d) No part of a unit shall be located closer than 152 meters (500 feet) from an occupied dwelling, school, or hospital that was occupied on the date when the operator first applied for a permit to develop the unit or the facility containing the unit, unless the owner of such dwelling, school, or hospital provides permission to the operator, in writing, for a closer distance.
- e) The facility shall not be located closer than 1525 meters (5000 feet) of any runway used by piston type aircraft or within 3050 meters (10,000 feet) of any runway used by turbojet aircraft unless the Federal Aviation Administration provides the operator with written permission, including technical justification, for a closer distance.
- f) An owner or operator proposing to locate a new MSWLF unit within a five-mile radius of any airport runway used by turbojet or piston-type aircraft shall notify the affected airport and the Federal Aviation Administration (FAA) within 7 days of filing a permit application with Agency in accordance with 35 Ill. Adm. Code 813 for developing a new landfill.

BOARD NOTE: Subsection (f) is derived from 40 CFR 258.10 (1992).

(Source: Amended in R93-10 at ___ Ill. Reg. ___, effective January 13, 1994)

Section 811.303 Design Period

- a) The design period for putrescible and chemical waste disposal units shall be the estimated operating life plus a postclosure care period of 30 years. The design period for putrescible waste landfill units, other than MSWLF units, may be reduced if ~~unless~~ measures are undertaken in compliance with subsections (b) and (c) to encourage stabilization of putrescible waste. The design period for a MSWLF unit may be reduced in accordance with subsection (d).

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- b) The design period for a disposal unit which accepts only putrescible waste in shredded form shall be the estimated operating life plus 20 years of postclosure care.
- c) The design period for a putrescible waste disposal unit that recycles leachate in accordance with Section 811.309(f) shall be the estimated operating life plus 20 years of postclosure care.
- d) An owner or operator of a MSWLF unit may petition the Board for an adjusted standard pursuant to Section 28.1 of the Act and 35 Ill. Adm. Code 106.Subpart G to reduce the minimum postclosure care specified in accordance with the requirements Sections 811.111(c), 811.309(h), 811.310(c), and 811.319(a).

BOARD NOTE: Subsection (d) is derived from 40 CFR 258.61(b)(1).

(Source: Amended in R93-10 at ___ Ill. Reg. ___, effective January 13, 1994.)

Section 811.309 Leachate Treatment and Disposal System

- a) Leachate shall be allowed to flow freely from the drainage and collection system. The operator is responsible for the operation of a leachate management system designed to handle all leachate as it drains from the collection system. The leachate management system shall consist of any combination of storage, treatment, pretreatment, and disposal options designed and constructed in compliance with the requirements of this Section.
- b) The leachate management system shall consist of any combination of multiple treatment and storage structures, to allow the management and disposal of leachate during routine maintenance and repairs.
- c) Standards for On-site Treatment and Pretreatment
- 1) All on-site treatment or pretreatment systems shall be considered part of the facility.
 - 2) The on-site treatment or pretreatment system shall be designed in accordance with the expected characteristics of the leachate. The design may

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- include modifications to the system necessary to accommodate changing leachate characteristics.
- 3) The on-site treatment or pretreatment system shall be designed to function for the entire design period.
 - 4) All of the facility's unit operations, tanks, ponds, lagoons and basins shall be designed and constructed with liners or containment structures to control seepage to groundwater.
 - 5) All treated effluent discharged to waters of the State shall meet the requirements of 35 Ill. Adm. Code 309.
 - 6) The treatment system shall be operated by an operator certified under the requirements of 35 Ill. Adm. Code 312.
- d) Standards for Leachate Storage Systems
- 1) The leachate storage facility must be able to store a minimum of at least five days' worth of accumulated leachate at the maximum generation rate used in designing the leachate drainage system in accordance with Section 811.307. The minimum storage capacity may be built up over time and in stages, so long as the capacity for five consecutive days of accumulated leachate, during extreme precipitation conditions, is available at any time during the design period of the facility.
 - 2) All leachate storage tanks shall be equipped with secondary containment systems equivalent to the protection provided by a clay liner 0.61 meter (2 feet thick) having a permeability no greater than 10⁻⁷ centimeters per second.
 - 3) Leachate storage systems shall be fabricated from material compatible with the leachate expected to be generated and resistant to temperature extremes.
 - 4) The leachate storage system shall not cause or contribute to a malodor.
 - 5) The leachate drainage and collection system shall not be used for the purpose of storing leachate.

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e) Standards for Discharge to an Off-site Treatment Works

- 1) Leachate may be discharged to an off-site treatment works that meets the following requirements:
 - A) All discharges of effluent from the treatment works shall meet the requirements of 35 Ill. Adm. Code 309.
 - B) The treatment system shall be operated by an operator certified under the requirements of 35 Ill. Adm. Code 312.
 - C) No more than 50 percent of the average daily influent flow can be attributable to leachate from the solid waste disposal facility. Otherwise, the treatment works shall be considered a part of the solid waste disposal facility.
- 2) The operator is responsible for securing permission from the off-site treatment works for authority to discharge to the treatment works.
- 3) All discharges to a treatment works shall meet the requirements of 35 Ill. Adm. Code 310.
- 4) Pumps, meters, valves and monitoring stations that control and monitor the flow of leachate from the unit and which are under the control of the operator shall be considered part of the facility and shall be accessible to the operator at all times.
- 5) Leachate shall be allowed to flow into the sewerage system at all times; however, if access to the treatment works is restricted or anticipated to be restricted for longer than five days, then an alternative leachate management system shall be constructed in accordance with subsection (c).
- 6) Where leachate is not directly discharged into a sewerage system, the operator shall provide storage capacity sufficient to transfer all leachate to an off-site treatment works. The storage system shall meet the requirements of subsection (d).

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f) Standards for Leachate Recycling Systems

- 1) Leachate recycling systems may be utilized only at permitted waste disposal units that meet the following requirements:
 - A) The unit must have a liner designed, constructed and maintained to meet the minimum standards of Section 811.306.
 - B) The unit must have a leachate collection system in place and operating in accordance with Section 811.307.
 - C) A gas management system, equipped with a mechanical device such as a compressor to withdraw gas, must be implemented to control odors and prevent migration of methane in accordance with Section 811.311.
 - D) The topography must be such that any accidental leachate runoff can be controlled by ditches, berms or other equivalent control means.
- 2) Leachate shall not be recycled during precipitation events or in volumes large enough to cause runoff or surface seeps.
- 3) The amount of leachate added to the unit shall not exceed the ability of the waste and cover soils to transmit leachate flow downward. All other leachate shall be considered excess leachate, and a leachate management system capable of disposing of all excess leachate must be available.
- 4) The leachate storage and distribution system shall be designed to avoid exposure of leachate to air unless aeration or functionally equivalent devices are utilized.
- 5) The distribution system shall be designed to allow leachate to be evenly distributed beneath the surface over the recycle area.
- 6) Daily and intermediate cover shall be permeable to the extent necessary to prevent the accumulation of water and formation of perched watertables and

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gas buildup; alternatively cover shall be removed prior to additional waste placement.

- 7) Daily and intermediate cover shall slope away from the perimeter of the site to minimize surface discharges.

g) Leachate Monitoring

- 1) Representative samples of leachate shall be collected from each unit and tested in accordance with subsections (g)(2) and (g)(3) at a frequency of once per quarter while the leachate management system is in operation. The frequency of testing may be changed to once per year for any monitored constituent, if it is not detected in the leachate. However, if such a constituent is detected in the leachate, testing frequency shall return to a quarterly schedule.

- 2) Discharges of leachate from units that dispose of putrescible wastes shall be tested for the following constituents prior to treatment or pretreatment:

A) Five day biochemical oxygen demand (BOD₅);

B) Chemical oxygen demand;

C) Total Suspended Solids;

D) Total Iron;

E) pH;

F) Any other constituents listed in the operator's National Pollution Discharge Elimination System (NPDES) discharge permit, pursuant to 35 Ill. Adm. Code 304, or required by a publicly owned treatment works, pursuant to 35 Ill. Adm. Code 310; and

- G) All of the indicator constituents chosen in accordance with 35 Ill. Adm. Code 811.319(a)(2)(B) and used by the operator for groundwater monitoring.

- 3) Discharges of leachate from units which dispose only chemical wastes shall be monitored for

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constituents determined by the characteristics of the chemical waste to be disposed of in the unit. They shall include, as a minimum:

A) pH;

B) Total Dissolved Solids;

C) Any other constituents listed in the operator's NPDES discharge permit, pursuant to 35 Ill. Adm. Code 304, or required by a publicly owned treatment works, pursuant to 35 Ill. Adm. Code 310; and

D) All of the indicator constituents chosen in accordance with 35 Ill. Adm. Code 811.319(a)(2)(B) and used by the operator for groundwater monitoring.

h) Time of Operation of the Leachate Management System

- 1) The operator shall collect and dispose of leachate for a minimum of five years after closure and thereafter until treatment is no longer necessary.

- 2) Treatment is no longer necessary if the leachate constituents do not exceed the wastewater effluent standards in 35 Ill. Adm. Code 304.124, 304.125, 304.126 and do not contain a BOD₅ concentration greater than 30 mg/L for six consecutive months.

- 3) Leachate collection at a MSWLF unit shall be continued for a minimum period of 30 years after closure, except as otherwise provided by subsections (h)(4) and (h)(5), below.

- 4) The Agency may reduce the leachate collection period at a MSWLF unit upon a demonstration by the owner or operator that the reduced period is sufficient to protect human health and environment.

- 5) The owner or operator of a MSWLF unit shall petition the Board for an adjusted standard in accordance with Section 811.303, if the owner or operator seeks a reduction of the postclosure care monitoring period for all of the following requirements:

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- i) Inspection and maintenance (Section 811.111);
- ii) Leachate collection (Section 811.309);
- iii) Gas monitoring (Section 811.310); and
- iv) Groundwater monitoring (Section 811.319).

BOARD NOTE: Subsection (h) is derived from 40 CFR 258.61 (1992).

(Source: Amended in R93-10 at ___ Ill. Reg. ___, effective January 13, 1994)

Section 811.310 Landfill Gas Monitoring

- a) This Section applies to all units that dispose putrescible wastes.
- b) Location and Design of Monitoring Wells
 - 1) Gas monitoring devices shall be placed at intervals and elevations within the waste to provide a representative sampling of the composition and buildup of gases within the unit.
 - 2) Gas monitoring devices shall be placed around the unit at locations and elevations capable of detecting migrating gas from the ground surface to the lowest elevation of the liner system or the top elevation of the groundwater, whichever is higher.
 - 3) A predictive gas flow model may be utilized to determine the optimum placement of monitoring points required for making observations and tracing the movement of gas.
 - 4) Gas monitoring devices shall be constructed from materials that will not react with or be corroded by the landfill gas.
 - 5) Gas monitoring devices shall be designed and constructed to measure pressure and allow collection of a representative sample of gas.

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- 6) Gas monitoring devices shall be constructed and maintained to minimize gas leakage.
- 7) The gas monitoring system shall not interfere with the operation of the liner, leachate collection system or delay the construction of the final cover system.
- 8) At least three ambient air monitoring locations shall be chosen and samples shall be taken no higher than 0.025 meter (1 inch) above the ground and 30.49m (100 feet) downwind from the edge of the unit or at the property boundary, whichever is closer to the unit.

c) Monitoring Frequency

- 1) All gas monitoring devices, including the ambient air monitors shall be operated to obtain samples on a monthly basis for the entire operating period and for a minimum of five years after closure.
- 2) After a minimum of five years after closure, monitoring frequency may be reduced to quarterly sampling intervals.
- 3) The sampling frequency may be reduced to yearly sampling intervals upon the installation and operation of a gas collection system equipped with a mechanical device such as a compressor to withdraw gas.
- 4) Monitoring shall be continued after for a minimum period of: thirty years after closure at MSWLF units, except as otherwise provided by subsections (c)(5) and (c)(6), below; five years after closure of, in the case of at landfills, other than MSWLF units, these which are used exclusively for disposing of wastes generated at the site; or a minimum of fifteen years after closure at all other landfills regulated under this Part. Monitoring, beyond the minimum period, may shall be discontinued if the following conditions have been met for at least one year:
 - A) The concentration of methane is less than five percent of the lower explosive limit in air for four consecutive quarters at all monitoring points outside the unit; and

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- B) Monitoring points within the unit indicate that methane is no longer being produced in quantities that would result in migration from the unit and exceed the standards of subsection (a)(1).
- 5) The operator shall include in the permit, a list of air toxics to be monitored in accordance with subsection (d). The Agency shall determine the monitoring frequency of the listed compounds based upon their emission rates and ambient levels in the atmosphere.
- 6) The Agency may reduce the gas monitoring period at a MSWLF unit upon a demonstration by the owner or operator that the reduced period is sufficient to protect human health and environment.
- 7) The owner or operator of a MSWLF unit shall petition the Board for an adjusted standard in accordance with Section 811.303, if the owner or operator seeks a reduction of the postclosure care monitoring period for all of the following requirements:
- i) Inspection and maintenance (Section 811.111);
 - ii) Leachate collection (Section 811.309);
 - iii) Gas monitoring (Section 811.310); and
 - iv) Groundwater monitoring (Section 811.319).

BOARD NOTE: Changes to subsections (c) are derived from 40 CFR 258.61 (1992).

- d) Parameters to be Monitored
- 1) All below ground monitoring devices shall be monitored for the following parameters at each sampling interval:
- A) Methane;
 - B) Pressure;
 - C) Nitrogen;

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- D) Oxygen;
 - E) Carbon dioxide; and
 - F) Any compound on the list of air toxics, adopted by the Board pursuant to Section 9.5 of the Act, which is expected to be produced in the landfill unit.
- 2) Ambient air monitors shall be sampled for methane only when the average wind velocity is less than 8 kilometers (five miles) per hour at a minimum of three downwind locations 30.49 meters (100 feet) from the edge of the unit or the property boundary, whichever is closer to the unit.
- 3) All buildings within a facility shall be monitored for methane by utilizing continuous detection devices located at likely points where methane might enter the building.

(Source: Amended in R93-10 at ___ Ill. Reg. ___, effective January 13, 1994)

Section 811.311 Landfill Gas Management System

- a) The operator shall install a gas management system if any one of the following conditions are met:
- 1) A methane concentration greater than 50 percent of the lower explosive limit in air is detected below the ground surface by a monitoring device or is detected by an ambient air monitor located at or beyond the property boundary or 30.5 meters (100 feet) from the edge of the unit, whichever is less, unless the operator can demonstrate that the detected methane concentration is not attributable to the facility;
 - 2) Methane is detected at a concentration greater than 25 percent of the lower explosive limit in air in any building on or near the facility, unless the operator can demonstrate that the detected methane concentration is not attributable to the facility;
 - 3) Malodors caused by the unit are detected beyond the property boundary; or

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- 4) Leachate is recycled in accordance with Section 811.309(e).
- b) If methane gas levels exceed the limits specified in subsections (a)(1) or (a)(2), an owner or operator of a MSWLF unit shall:
- 1) Notify the Agency in writing, within two business days, of an observed exceedance; and
 - 2) Implement the requirements of this Section to ensure the protection of human health.
- bc) Standards for Gas Venting System
- 1) Gas venting systems shall be utilized only as optional, temporary mitigation until the completion of an active system.
 - 2) All materials shall be resistant to chemical reaction with the constituents of the gas.
 - 3) The system shall be capable of venting all gas down to the water table or bottom of the liner, whichever is higher.
 - 4) Gas venting systems shall be installed only outside the perimeter of the unit.

ed) Standards for Gas Collection Systems

- 1) Gas collection systems may be installed either within the perimeter of the unit or outside the unit.
- 2) The operator shall design and operate the system so that the standards of subsections (a)(1), (a)(2), and (a)(3) will not be exceeded.
- 3) The gas collection system shall transport gas to a central point or points for processing for beneficial uses or disposal in accordance with the requirements of Section 811.312.
- 4) The gas collection system shall be designed to function for the entire design period. The design may include changes in the system to accommodate changing gas flow rates or compositions.

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- 5) All materials and equipment used in construction of the system shall be rated by the manufacturer as safe for use in hazardous or explosive environments and shall be resistant to corrosion by constituents of the landfill gas.
- 6) The gas collection system shall be designed and constructed to withstand all landfill operating conditions, including settlement.
- 7) The gas collection system and all associated equipment including compressors, flares, monitoring installations, and manholes shall be considered part of the facility.
- 8) Provisions shall be made for collecting and draining gas condensate to a management system meeting the requirements of Section 811.309.
- 9) Under no circumstances shall the gas collection system compromise the integrity of the liner, leachate collection or cover systems.
- 10) The portion of the gas collection system, used to convey the gas collected from one or more units for processing and disposal shall be tested to be airtight to prevent the leaking of gas from the collection system or entry of air into the system.
- 11) The gas collection system shall be operated until the waste has stabilized enough to no longer produce methane in quantities that exceed the minimum allowable concentrations in subsections (a)(1), (a)(2), and (a)(3).
- 12) The gas collection system shall be equipped with a mechanical device, such as a compressor, capable of withdrawing gas, or be designed so that a mechanical device can be easily installed at a later time, if necessary, to meet the requirements of subsections (a)(1), (a)(2), and (a)(3).

BOARD NOTE: Subsection (b) is derived from 40 CFR 258.23(c)(1) (1992).

(Source: Amended in R93-10 at Ill. Reg. _____, effective January 13, 1994)

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Section 811.314 Final Cover System

- a) The unit shall be covered by a final cover consisting of a low permeability layer overlain by a final protective layer constructed in accordance with the requirements of this Section.
- b) Standards for the Low Permeability Layer
- 1) Not later than 60 days after placement of the final lift of solid waste, a low permeability layer shall be constructed.
 - 2) The low permeability layer shall cover the entire unit and connect with the liner system.
 - 3) The low permeability layer shall consist of any one of the following:
 - A) A compacted earth layer constructed in accordance with the following standards:
 - i) The minimum allowable thickness shall be 0.91 meter (3 feet);
 - ii) The layer shall be compacted to achieve a permeability of 1×10^{-7} centimeters per second and minimize void spaces.
 - iii) Alternative specifications may be utilized provided that the performance of the low permeability layer is equal to or superior to the performance of a layer meeting the requirements of subsections (b)(3)(A)(i) and (b)(3)(A)(ii).

B) A geomembrane constructed in accordance with the following standards:

- i) The geomembrane shall provide performance equal or superior to the compacted earth layer described in subsection (b)(3)(A).
- ii) The geomembrane shall have strength to withstand the normal stresses imposed by the waste stabilization process.

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- iii) The geomembrane shall be placed over a prepared base free from sharp objects and other materials which may cause damage.
- c) Any other low permeability layer construction techniques or materials, provided that they provide equivalent or superior performance to the requirements of this subsection.
 - 4) For a MSWLF unit, subsection (b)(3) notwithstanding, if the bottom liner system permeability is lower than 1×10^{-7} cm/sec, the permeability of the low permeability layer of the final cover system shall be less than or equal to the permeability of the bottom liner system.
 - c) Standards for the Final Protective Layer
 - 1) The final protective layer shall cover the entire low permeability layer.
 - 2) The thickness of the final protective layer shall be sufficient to protect the low permeability layer from freezing and minimize root penetration of the low permeability layer, but shall not be less than 0.91 meter (3 feet).
 - 3) The final protective layer shall consist of soil material capable of supporting vegetation.
 - 4) The final protective layer shall be placed as soon as possible after placement of the low permeability layer to prevent desiccation, cracking, freezing or other damage to the low permeability layer.

BOARD NOTE: Subsection (b)(4) is derived from 40 CFR 258.60(a) (1992).

(Source: Amended in R93-10 at ___ Ill. Reg. ____, effective January 13, 1994)

Section 811.318 Design, Construction and Operation of Groundwater Monitoring Systems

- a) All potential sources of discharges to groundwater within the facility, including, but not limited to, all waste disposal units and the leachate management sys-

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tem, shall be identified and studied through a network of monitoring wells operated during the active life of the unit and for the time after closure specified in accordance with Section 811.319. Monitoring wells designed and constructed as part of the monitoring network shall be maintained along with records that include, but are not limited to, exact well location, well size, type of well, the design and construction practice used in its installation and well and screen depths.

b) Standards for the Location of Monitoring Points

- 1) A network of monitoring points shall be established at sufficient locations downgradient with respect to groundwater flow and not excluding the downward direction, to detect any discharge of contaminants from any part of a potential source of discharge.
- 2) Monitoring wells shall be located in stratigraphic horizons that could serve as contaminant migration pathways.
- 3) Monitoring wells shall be established as close to the potential source of discharge as possible without interfering with the waste disposal operations, and within half the distance from the edge of the potential source of discharge to the edge of the zone of attenuation downgradient, with respect to groundwater flow, from the source.
- 4) The network of monitoring points of several potential sources of discharge within a single facility may be combined into a single monitoring network, provided that discharges from any part of all potential sources can be detected.
- 5) A minimum of at least one monitoring well shall be established at the edge of the zone of attenuation and shall be located downgradient with respect to groundwater flow and not excluding the downward direction, from the unit. Such well or wells shall be used to monitor any statistically significant increase in the concentration of any constituent, in accordance with Section 811.320(e) and shall be used for determining compliance with an applicable groundwater quality standard of Section 811.320. An observed statistically

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significant increase above the applicable groundwater quality standards of Section 811.320 in a well located at or beyond the compliance boundary shall constitute a violation.

c) Maximum Allowable Predicted Concentrations

The operator shall use the same calculation methods, data, and assumptions as used in the groundwater impact assessment to predict the concentration over time and space of all constituents chosen to be monitored in accordance with Section 811.319 at all monitoring points. The predicted values shall be used to establish the maximum allowable predicted concentrations (MAPC) at each monitoring point. The MAPCs calculated in this subsection shall be applicable within the zone of attenuation.

d) Standards for Monitoring Well Design and Construction

- 1) All monitoring wells shall be cased in a manner that maintains the integrity of the bore hole. The casing material shall be inert so as not to affect the water sample. Casing requiring solvent-cement type couplings shall not be used.
- 2) Wells shall be screened to allow sampling only at the desired interval. Annular space between the borehole wall and well screen section shall be packed with gravel sized to avoid clogging by the material in the zone being monitored. The slot size of the screen shall be designed to minimize clogging. Screens shall be fabricated from material expected to be inert with respect to the constituents of the groundwater to be sampled.
- 3) Annular space above the well screen section shall be sealed with a relatively impermeable, expandable material such as a cement/bentonite grout, which does not react with or in any way affect the sample, in order to prevent contamination of samples and groundwater and avoid interconnections. The seal shall extend to the highest known seasonal groundwater level.
- 4) The annular space shall be back-filled with expanding cement grout from an elevation below the frost line and mounded above the surface and

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- sloped away from the casing so as to divert surface water away.
- 5) The annular space between the upper and lower seals and in the unsaturated zone may be back-filled with uncontaminated cuttings.
 - 6) All wells shall be covered with vented caps and equipped with devices to protect against tampering and damage.
 - 7) All wells shall be developed to allow free entry of water, minimize turbidity of the sample, and minimize clogging.
 - 8) The transmissivity of the zone surrounding all well screens shall be established by field testing techniques.
 - 9) Other sampling methods and well construction techniques may be utilized if they provide equal or superior performance to the requirements of this subsection.
- e) Standards for Sample Collection and Analysis
- 1) The groundwater monitoring program shall include consistent sampling and analysis procedures to assure that monitoring results can be relied upon to provide data representative of groundwater quality in the zone being monitored.
 - 2) The operator shall utilize procedures and techniques to insure that collected samples are representative of the zone being monitored and that prevent cross contamination of samples from other monitoring wells or from other samples. At least 95 percent of a collected sample shall consist of groundwater from the zone being monitored.
 - 3) The operator shall establish a quality assurance program that provides quantitative detection limits and the degree of error for analysis of each chemical constituent.
 - 4) The operator shall establish a sample preservation and shipment procedure that maintains the reliability of the sample collected for analysis.

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- 5) The operator shall institute a chain of custody procedure to prevent tampering and contamination of the collected samples prior to completion of analysis.
- 6) At a minimum, the operator shall sample the following parameters at all wells at the time of sample collection and immediately before filtering and preserving samples for shipment:
 - A) The elevation of the water table;
 - B) The depth of the well below ground;
 - C) pH;
 - D) The temperature of the sample; and
 - E) Specific Conductance.
- 7) In addition to the requirements of subsections (e)(1) through (e)(6), the following requirements shall apply to MSWLF units:
 - A) Each time groundwater is sampled, an owner or operator of a MSWLF unit shall:
 - i) Measure the groundwater elevations in each well immediately prior to purging; and
 - ii) Determine the rate and direction of ground-water flow.
 - B) An owner or operator shall measure groundwater elevations in wells which monitor the same waste management area within a period of time short enough to avoid temporal variations in groundwater flow which could preclude accurate determination of groundwater flow rate and direction.

BOARD NOTE: Subsection (e)(7) is derived from 40 CFR 258.53(d) (1992).

(Source: Amended in R93-10 at ___ Ill. Reg. ___, effective January 13, 1994.)

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Section 811.319 Groundwater Monitoring Programs

a) Detection Monitoring Program

Any use of the term "maximum allowable predicted concentration" in this Section is a reference to 35 Ill. Adm. Code 811.318(c). The operator shall implement a detection monitoring program in accordance with the following requirements:

1) Monitoring Schedule and Frequency

A) The monitoring period shall begin as soon as waste is placed into the unit of a new landfill or within one year of the effective date of this Part for an existing landfill. Monitoring shall continue for a minimum period of fifteen years after closure, or in the case of MSWLF units, a minimum period of 30 years after closure, except as otherwise provided by subsection (a)(1)(C) of this Section. The operator shall sample all monitoring points for all potential sources of contamination on a quarterly basis except as specified in subsection (a)(3) or may institute more frequent sampling throughout the time the source constitutes a threat to groundwater. For the purposes of this section, the source shall be considered a threat to groundwater, if the results of the monitoring indicate that the concentrations of any of the constituent monitored within the zone of attenuation are above the maximum allowable predicted concentration for that constituent.

B) Beginning fifteen years after closure of the unit, or five years after all other potential sources of discharge no longer constitute a threat to groundwater, as defined in subsection (a)(1)(A), the monitoring frequency may change on a well by well basis to an annual schedule if either of the following conditions exist. However, monitoring shall return to a quarterly schedule at any well where a statistically significant increase is determined to have occurred in accordance with Section 811.320(e), in the concentration of any

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constituent with respect to the previous sample.

i) All constituents monitored within the zone of attenuation have returned to a concentration less than or equal to ten percent of the maximum allowable predicted concentration; or

ii) All constituents monitored within the zone of attenuation are less than or equal to their maximum allowable predicted concentration for eight consecutive quarters.

C) Monitoring shall be continued for a minimum period of: thirty years after closure at MSWLF units, except as otherwise provided by subsections (a)(1)(D) and (a)(1)(E), below; five years after closure ~~or~~, in the case of landfills, other than MSWLF units, those which are used exclusively for disposing waste generated at the site; or a minimum period of fifteen years after closure at all other landfills regulated under this Part. Monitoring, beyond the minimum period, may be discontinued under the following conditions:

i) No statistically significant increase is detected in the concentration of any constituent above that measured and recorded during the immediately preceding scheduled sampling for three consecutive years, after changing to an annual monitoring frequency; or

ii) Immediately after contaminated leachate is no longer generated by the unit.

D) The Agency may reduce the groundwater monitoring period at a MSWLF unit upon a demonstration by the owner or operator that the reduced period is sufficient to protect human health and environment.

E) An owner or operator of a MSWLF unit shall petition the Board for an adjusted standard in accordance with Section 811.303, if the owner or operator seeks a reduction of the

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Postclosure care monitoring period for all of the following requirements:

- i) Inspection and maintenance (Section 811.111);
- ii) Leachate collection (Section 811.309);
- iii) Gas monitoring (Section 811.310); and
- iv) Groundwater monitoring (Section 811.319).

BOARD NOTE: Changes to subsections (a)(1)(A) and (a)(1)(C), and subsections (a)(1)(D) and (a)(1)(E) are derived from 40 CFR 258.61 (1992).

2) Criteria for Choosing Constituents to be Monitored

A) The operator shall monitor each well for constituents that will provide a means for detecting groundwater contamination. Constituents shall be chosen for monitoring if they meet the following requirements:

- i) The constituent appears in, or is expected to be in, the leachate; and
- ii) The Board has established for the constituent a public or food processing water supply standard, at 35 Ill. Adm. Code 302, the Board has established a groundwater quality standard under the Illinois Groundwater Protection Act (Ill. Rev. Stat. 1989-1991, ch. 111 1/2, par. 7451 et. seq. [415 ILCS 55/1 et. seq.]), or the constituent may otherwise cause or contribute to groundwater contamination.

B) One or more indicator constituents, representative of the transport processes of constituents in the leachate, may be chosen for monitoring in place of the constituents it represents. The use of such indicator constituents must be included in an Agency approved permit.

3) Organic Chemicals Monitoring

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The operator shall monitor each existing well that is being used as a part of the monitoring well network at the facility within one year of the effective date of this Part, and monitor each new well within three months of its establishment. The monitoring required by this subsection shall be for a broad range of organic chemical contaminants in accordance with the procedures described below:

A) The analysis shall be at least as comprehensive and sensitive as the tests for;

- i) The 51 organic chemicals in drinking water described at 40 CFR 141.40 (1988), incorporated by reference at 35 Ill. Adm. Code 810.104; and
- ii) Any other organic chemical for which a groundwater quality standard or criterion has been adopted pursuant to Section 14.4 of the Act or Section 8 of the Illinois Groundwater Protection Act.

B) At least once every two years, the operator shall monitor each well in accordance with subsection (a)(1)(A).

C) The operator of a MSWLF unit shall monitor each well in accordance with subsection (a)(1)(A) on an annual basis.

BOARD NOTE: Subsection (a)(3)(C) is derived from 40 CFR 258.54(b) (1992).

4) Confirmation of Monitored Increase

A) The confirmation procedures of this subsection shall be used only if the concentrations of the constituents monitored can be measured at or above the practical quantitation limit (PQL). The PQL is defined as the lowest concentration that can be reliably measured within specified limits of precision and accuracy, under routine laboratory operating conditions. The operator shall institute the confirmation procedures of subsection (a)(4)(B) after

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notifying the Agency in writing, within 10 days, of the following observed increases :

- i) The concentration of any constituent monitored in accordance with subsection (a)(1) and (a)(2) shows a progressive increase over four consecutive quarters;
- ii) The concentration of any constituent exceeds the maximum allowable predicted concentration at an established monitoring point within the zone of attenuation;
- iii) The concentration of any constituent monitored in accordance with subsection (a)(3) exceeds the preceding measured concentration at any established monitoring point; and
- iv) The concentration of any constituent monitored at or beyond the zone of attenuation exceeds the applicable groundwater quality standards of Section 811.320.

B) The confirmation procedures shall include the following:

- i) The operator shall verify any observed increase by taking additional samples within 45 days of the initial observation and ensure that the samples and sampling protocol used will detect any statistically significant increase in the concentration of the suspect constituent in accordance with subsection 811.320(e), so as to confirm the observed increase. The operator shall notify the Agency of any confirmed increase before the end of the next business day following the confirmation.
- ii) The operator shall determine the source of any confirmed increase, which may include, but shall not be limited to, natural phenomena, sampling or analysis errors, or an off-site source.

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- iii) The operator shall notify the Agency in writing of any confirmed increase and state the source of the confirmed increase and provide the rationale used in such a determination within ten days of the determination.

b) Assessment Monitoring

The operator shall begin an assessment monitoring program in order to confirm that the solid waste disposal facility is the source of the contamination and to provide information needed to carry out a groundwater impact assessment in accordance with subsection (c). The assessment monitoring program shall be conducted in accordance with the following requirements:

- 1) The assessment monitoring shall be conducted in accordance with this subsection to collect information to assess the nature and extent of groundwater contamination. The owner or operator of a MSWLF unit shall comply with the additional requirements prescribed in subsection (b)(5). The assessment monitoring which shall consist of, but not be limited to, the following steps:
 - A) More frequent sampling of the wells in which the observation occurred;
 - B) More frequent sampling of any surrounding wells;
 - C) The placement of additional monitoring wells to determine the source and extent of the contamination;
 - D) Monitoring of additional constituents that might indicate the source and extent of contamination; and
 - E) Any other investigative techniques that will assist in determining the nature and extent of the contamination.
- 2) The operator of the facility for which assessment monitoring is required shall file the plans for an assessment monitoring program with the Agency. If the facility is permitted by the Agency, then the

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plans shall be filed for review as a significant permit modification pursuant to 35 Ill. Adm. Code 813.Subpart B. The assessment monitoring program shall be implemented within 90 days of confirmation of any monitored increase in accordance with subsection (a)(4) or, in the case of permitted facilities, within 90 days of Agency approval.

3) If the analysis of the assessment monitoring data shows that the concentration of one or more constituents, monitored at or beyond the zone of attenuation is above the applicable groundwater quality standards of Section 811.320 and is attributable to the solid waste disposal facility, then the operator shall determine the nature and extent of the groundwater contamination including an assessment of the potential impact on the groundwater should waste continue to be accepted at the facility and shall implement remedial action in accordance with subsection (d).

4) If the analysis of the assessment monitoring data shows that the concentration of one or more constituents is attributable to the solid waste disposal facility and exceeds the maximum allowable predicted concentration within the zone of attenuation, then the operator shall conduct a groundwater impact assessment in accordance with the requirements of subsection (c).

5) In addition to the requirements of subsection (b)(1), to collect information to assess the nature and extent of groundwater contamination, the following requirements are applicable to MSWLF units:

A) The monitoring of additional constituents pursuant to (b)(1)(D) shall include, at a minimum, the constituents listed in 40 CFR 258. Appendix II, incorporated by reference at 35 Ill. Adm. Code 810.104.

BOARD NOTE: Subsection (b)(5)(A) is derived from 40 CFR 258.55(b) (1992).

B) Within 14 days of obtaining the results of sampling required under subsection (b)(5)(A), the owner or operator shall:

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- i) Place a notice in the operating record identifying the constituents that have been detected; and
- ii) Notify the Agency that such a notice has been placed in the operating record.

BOARD NOTE: Subsection (b)(5)(B) is derived from 40 CFR 258.55(d)(1) (1992).

C) The owner or operator shall establish background concentrations for any constituents detected pursuant to subsection (b)(5)(A) in accordance with Section 811.320(e).

BOARD NOTE: Subsection (b)(5)(C) is derived from 40 CFR 258.55(d)(3) (1992).

D) Within 90 days of the initial monitoring in accordance with subsection (b)(5)(A), the owner or operator shall monitor for the constituents listed in 40 CFR 258. Appendix II on a semiannual basis during the assessment monitoring.

BOARD NOTE: Subsection (b)(5)(D) is derived from 40 CFR 258.55(d)(2) (1992).

E) The owner or operator may request the Agency to delete any of the of the 40 CFR 258. Appendix II constituents by demonstrating to the Agency that the deleted constituents are not reasonably expected to be in or derived from the waste contained in the leachate.

BOARD NOTE: Subsection (b)(5)(E) is derived from 40 CFR 258.55(b) (1992).

F) Within 14 days of finding an exceedance above the applicable groundwater quality standards in accordance with subsection (b)(3), the owner or operator shall:

- i) Place a notice in the operating record that identifies the constituents monitored under subsection (b)(1)(D).

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that have exceeded the groundwater quality standard;

- ii) Notify the Agency and the appropriate officials of the local municipality or county within whose boundaries the site is located that such a notice has been placed in the operating record; and
- iii) Notify all persons who own land or reside on land that directly overlies any part of the plume of contamination if contaminants have migrated off-site.

BOARD NOTE: Subsection (b)(5)(F) is derived from 40 CFR 258.55(g)(1)(i) through (iii) (1992).

- G) If the concentrations of all 40 CFR 258.Appendix II constituents are shown to be at or below background values, using the statistical procedures in Section 811.320(e), for two consecutive sampling events, the owner or operator shall notify the Agency of this finding and may stop monitoring the 40 CFR 258.Appendix II constituents.

BOARD NOTE: Subsection (b)(5)(G) is derived from 40 CFR 258.55(e) (1992).

c) Assessment of Potential Groundwater Impact

An operator required to conduct a groundwater impact assessment in accordance with subsection (b)(4) shall assess the potential impacts outside the zone of attenuation that may result from confirmed increases above the maximum allowable predicted concentration within the zone of attenuation, attributable to the facility, in order to determine if there is need for remedial action. In addition to the requirements of Section 811.317, the following shall apply:

- 1) The operator shall utilize any new information developed since the initial assessment and information from the detection and assessment monitoring programs and such information may be used for the recalibration of the GCT model; and

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- 2) The operator shall submit the groundwater impact assessment and any proposed remedial action plans determined necessary pursuant to subsection (d) to the Agency within 180 days of the start of the assessment monitoring program.

d) Remedial Action. The owner or operator of a MSWLF unit shall conduct corrective action in accordance with Sections 811.324, 811.325, and 811.326. The owner or operator of a landfill facility, other than a MSWLF unit, shall conduct remedial action in accordance with this subsection.

- 1) The operator shall submit plans for the remedial action to the Agency. Such plans and all supporting information including data collected during the assessment monitoring shall be submitted within 90 days of determination of either of the following:

- A) The groundwater impact assessment performed in accordance with subsection (c), indicates that remedial action is needed; or
- B) Any confirmed increase above the applicable groundwater quality standards of Section 811.320 is determined to be attributable to the solid waste disposal facility in accordance with subsection (b).

- 2) If the facility has been issued a permit by the Agency, then the operator shall submit this information as an application for significant modification to the permit;

- 3) The operator shall implement the plan for remedial action within 90 days of the following:

- A) Completion of the groundwater impact assessment under subsection (c) that requires remedial action;
- B) Establishing that a violation of an applicable groundwater quality standard of Section 811.320 is attributable to the solid waste disposal facility in accordance with subsection (b)(3); or

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- C) Agency approval of the remedial action plan, where the facility has been permitted by the Agency.
- 4) The remedial action program shall consist of one or a combination of one or more of the following solutions:
- A) Retrofit additional groundwater protective measures within the unit;
 - B) Construct an additional hydraulic barrier, such as a cutoff wall or slurry wall system;
 - C) Pump and treat the contaminated groundwater; or
 - D) Any other equivalent technique which will prevent further contamination of groundwater.
- 5) Termination of the Remedial Action Program
- A) The remedial action program shall continue in accordance with the plan until monitoring shows that the concentrations of all monitored constituents are below the maximum allowable predicted concentration within the zone of attenuation, and below the applicable groundwater quality standards of Section 811.320 at or beyond the zone of attenuation, over a period of 4 consecutive quarters.
 - B) The operator shall submit to the Agency all information collected under subsection (d)(5)(A). If the facility is permitted then the operator shall submit this information as significant modification of the permit.

(Source: Amended in R93-10 at ___ Ill. Reg. ___, effective January 13, 1994)

Section 811.320 Groundwater Quality Standards

- a) Applicable Groundwater Quality Standards
 - 1) Groundwater quality shall be maintained at each constituent's background concentration, at or beyond the zone of attenuation. The applicable

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groundwater quality standard established for any constituent shall be:

- A) The background concentration; or
 - B) The Board established standard adjusted by the Board in accordance with the justification procedure of subsection (b).
- 2) Any statistically significant increase above an applicable groundwater quality standard established pursuant to subsection (a) that is attributable to the facility and which occurs at or beyond the zone of attenuation within 100 years after closure of the last unit accepting waste within such a facility shall constitute a violation.
- 3) For the purposes of this Part:
- A) "Background concentration" means that concentration of a constituent that is established as the background in accordance with subsection (d); and
 - B) "Board established standard" is the concentration of a constituent adopted by the Board as a standard for public and food processing water supplies under 35 Ill. Adm. Code 302 or as a groundwater quality standard adopted by the Board pursuant to Section 14.4 of the Act or Section 8 of the Illinois Groundwater Protection Act, whichever is lower.
- b) Justification for Adjusted Groundwater Quality Standards
- 1) An operator may petition the Board for an adjusted groundwater quality standard in accordance with the procedures specified in Section 28.1 of the Act and 35 Ill. Adm. Code 106.410 through 106.416.
 - 2) For groundwater which contains naturally occurring constituents which meet the requirements of 35 Ill. Adm. Code 302.301, 302.304, and 302.305, the Board will specify adjusted groundwater quality standards no greater than those of 35 Ill. Adm.

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Code 302.301, 302.304, and 302.305, upon a demonstration by the operator that:

- A) The change in standards will not interfere with, or become injurious to, any present or potential beneficial uses for such waters;
- B) The change in standards is necessary for economic or social development, by providing information including, but not limited to, the impacts of the standards on the regional economy, social disbenefits such as loss of jobs or closing of landfills, and economic analysis contrasting the health and environmental benefits with costs likely to be incurred in meeting the standards; and
- C) All technically feasible and economically reasonable methods are being used to prevent the degradation of the groundwater quality.

- 3) Notwithstanding subsection (b)(2), in no case shall the Board specify adjusted groundwater quality standards for a MSWLF unit greater than the levels set forth below:

Chemical	Concentration (mg/l)
Arsenic	0.05
Barium	1.0
Benzene	0.005
Cadmium	0.01
Carbon tetrachloride	0.005
Chromium (hexavalent)	0.05
2,4-Dichlorophenoxy acetic acid	0.1
1,4-Dichlorobenzene	0.075
1,2-Dichloroethane	0.005
1,1-Dichloroethylene	0.007
Endrin	0.0002
Fluoride	4
Lindane	0.004
Lead	0.05
Mercury	0.002
Methoxychlor	0.1
Nitrate	10
Selenium	0.01
Silver	0.05

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Toxaphene	0.005
1,1,1-Trichloromethane	0.2
Trichloroethylene	0.005
2,4,5-Trichlorophenoxy acetic acid	0.01
Vinyl Chloride	0.002

- 34) For groundwater which contains naturally occurring constituents which do not meet the standards of 35 Ill. Adm. Code 302.301, 302.304, and 302.305, the Board will specify adjusted groundwater quality standards, upon a demonstration by the operator that:

- A) The groundwater does not presently serve as a source of drinking water;
- B) The change in standards will not interfere with, or become injurious to, any present or potential beneficial uses for such waters;
- C) The change in standards is necessary for economic or social development, by providing information including, but not limited to, the impacts of the standards on the regional economy, social disbenefits such as loss of jobs or closing of landfills, and economic analysis contrasting the health and environmental benefits with costs likely to be incurred in meeting the standards; and
- D) The groundwater cannot presently, and will not in the future, serve as a source of drinking water because:
- i) It is impossible to remove water in usable quantities;
- ii) The groundwater is situated at a depth or location such that recovery of water for drinking purposes is not technologically feasible or economically reasonable;
- iii) The groundwater is so contaminated that it would be economically or technologically impractical to render that water fit for human consumption;

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- iv) The total dissolved solids content of the groundwater is more than 3,000 mg/l and that water will not be used to serve a public water supply system; or
- v) The total dissolved solids content of the groundwater exceeds 10,000 mg/l.

c) Determination of the Zone of Attenuation

- 1) The zone of attenuation, within which concentrations of constituents in leachate discharged from the unit may exceed the applicable groundwater quality standard of this Section, is a volume bounded by a vertical plane at the property boundary or 100 feet from the edge of the unit, whichever is less, extending from the ground surface to the bottom of the uppermost aquifer and excluding the volume occupied by the waste.

- 2) Zones of attenuation shall not extend to the annual high water mark of navigable surface waters.

- 3) Overlapping zones of attenuation from units within a single facility may be combined into a single zone for the purposes of establishing a monitoring network.

d) Establishment of Background Concentrations

- 1) The initial monitoring to determine background concentrations shall commence during the hydrogeological assessment required by Section 811.315. The background concentrations for those parameters identified in Sections 811.315(e)(1)(G) and 811.319(a)(2) and (a)(3) shall be established based on quarterly sampling of wells for one year, monitored in accordance with the requirements of subsections (d)(2), (d)(3) and (d)(4), which may be adjusted during the operation of a facility. Statistical tests and procedures shall be employed, in accordance with subsection (e), depending on the number, type and frequency of samples collected from the wells, to establish the background concentrations. Adjustments to the background concentrations shall be made only if changes in the concentrations of constituents observed in upgradient wells over time are

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determined, in accordance with subsection (e), to be statistically significant. Background concentrations determined in accordance with this subsection shall be used for the purposes of establishing groundwater quality standards, in accordance with subsection (a). The operator shall prepare a list of the background concentrations established in accordance with this subsection. The operator shall maintain such a list at the facility, shall submit a copy of the list to the Agency for establishing standards in accordance with subsection (a), and shall provide updates to the list within ten days of any change to the list.

- 2) A network of monitoring wells shall be established upgradient from the unit, with respect to groundwater flow, in accordance with the following standards, in order to determine the background concentrations of constituents in the groundwater:

- A) The wells shall be located at such a distance that discharges of contaminants from the unit will not be detectable;

- B) The wells shall be sampled at the same frequency as other monitoring points to provide continuous background concentration data, throughout the monitoring period; and

- C) The wells shall be located at several depths to provide data on the spatial variability.

- 3) A determination of background concentrations may include the sampling of wells that are not hydraulically upgradient of the waste unit where:

- A) Hydrogeologic conditions do not allow the owner or operator to determine what wells are hydraulically upgradient of the waste; and

- B) Sampling at other wells will provide an indication of background concentrations that is representative of that which would have been provided by upgradient wells.

- 4) If background concentrations cannot be determined on site, then alternative background concentrations may be determined from actual

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monitoring data from the aquifer of concern, which includes, but is not limited to, data from another landfill site that overlies the same aquifer.

e) Statistical Analysis of Groundwater Monitoring Data

- 1) Statistical tests shall be used to analyze groundwater monitoring data. One or more of the normal theory statistical tests listed in subsection (e)(4) shall be chosen first for analyzing the data set or transformations of the data set. Where such normal theory tests are demonstrated to be inappropriate, tests listed in subsection (e)(5) or a test in accordance with subsection (e)(6) shall be used. Any statistical test chosen from subsections (e)(4) or (e)(5), the level of significance (Type 1 error level) shall be no less than 0.01, for individual well comparisons, and no less than 0.05, for multiple well comparisons. The statistical analysis shall include, but not be limited to, the accounting of data below the detection limit of the analytical method used, the establishment of background concentrations and the determination of whether statistically significant changes have occurred in:

- A) The concentration of any chemical constituent with respect to the background concentration or maximum allowable predicted concentration; and
 - B) The established background concentration of any chemical constituents over time.
- 2) The statistical test or tests used shall be based upon the sampling and collection protocol of Sections 811.318 and 811.319.
 - 3) Monitored data that are below the level of detection shall be reported as not detected (ND). The level of detection for each constituent shall be the minimum concentration of that constituent which can be measured and reported with 99 percent confidence that the true value is greater than zero, which is defined as the method detection limit (MDL). The following procedures shall be used to analyze such data, unless an alternative

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procedure in accordance with subsection (e)(6), is shown to be applicable:

- A) Where the percentage of nondetects in the data base used is less than 15 percent, the operator shall replace NDs with the MDL divided by two, then proceed with the use of one or more of the Normal Theory statistical tests listed in subsection (e)(4);
 - B) Where the percentage of nondetects in the data base or data transformations used is between 15 and 50 percent, and the data are normally distributed, the operator shall use Cohen's adjustment to the sample mean and standard deviation, followed by one or more of the tests listed in subsection (e)(4)(C). However, where data are not normally distributed, the operator shall use an applicable nonparametric test from subsection (e)(5);
 - C) Where the percentage of nondetects in the database used is above 50 percent, then the owner or operator shall use the test of proportions listed in subsection (e)(4).
- 4) Normal theory statistical tests :
 - A) Student t-test including, but not limited to, Cochran's Approximation to the Behren-Fisher (CABF) t-test and Averaged Replicate (AR) t-test.
 - B) Parametric analysis of variance (ANOVA) followed by one or more of the multiple comparison procedures including, but not limited to, Fisher's Least Significant Difference (LSD), Student Newman-Kuel procedure, Duncan's New Multiple Range Test and Tukey's W procedure.
 - C) Control Charts, Prediction Intervals and Tolerance Intervals, for which the type I error levels shall be specified by the Agency in accordance with the requirements of 35 Ill. Adm. Code 724.197(i).

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- 5) Nonparametric statistical tests shall include: Mann-Whitney U-test, Kruskal-Wallis test, a nonparametric analysis of variance (ANOVA) for multiple comparisons or the Wilcoxon Rank Sum test.
- 6) Any other statistical test based on the distribution of the sampling data may be used, if it is demonstrated to meet the requirements of 35 Ill. Adm. Code 724.197(i).

BOARD NOTE: Subsection (b)(3) is derived from 40 CFR 258.40 Table 1. (1992).

(Source: Amended in R93-10 at — Ill. Reg. —, effective January 13, 1994)

Section 811.323 Load Checking Program

- a) The operator shall implement a load checking program that meets the requirements of this Section, for detecting and discouraging attempts to dispose regulated hazardous wastes at the facility. For purposes of this Section and Section 811.406, "regulated hazardous wastes" are wastes defined as such under RCRA, at 35 Ill. Adm. Code 721, and subject to regulations under 35 Ill. Adm. Code: Subtitle G.

- b) In addition to checking for hazardous waste in accordance with subsection (a), the load checking program at a MSWLF unit shall include waste load inspection for detecting and discouraging attempts to dispose "polychlorinated biphenyl wastes" as defined in 40 CFR 761.3 (1992).

BOARD NOTE: Subsection (b) is derived from 40 CFR 258.20(a) (1992).

- b) The load checking program shall consist of, at a minimum, the following components:

- 1) Random inspections
- A) An inspector designated by the facility shall examine at least three random loads of solid waste delivered to the landfill on a random day each week. The drivers randomly selected by the inspector shall be directed to discharge their loads at a separate,

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- 1) Establish and implement a corrective action groundwater monitoring program that:
- A) At a minimum, meets the requirements of an assessment monitoring program under Section 811.319(b);
- B) Indicates the effectiveness of the remedy; and
- C) Demonstrates compliance with ground-water protection standard pursuant to subsection (e) of this Section.
- 2) Implement the remedy selected pursuant to Section 811.325.
- 3) Take any interim measures necessary to ensure the protection of human health and the environment. The interim measures should, to the greatest extent practicable, be consistent with the objectives of and contribute to the performance of any remedy that may be required pursuant to Section 811.325. The owner or operator shall consider the following factors in determining whether interim measures are necessary:
- A) The time required to develop and implement a final remedy;
- B) Any actual or potential exposure of nearby populations or environmental receptors to hazardous constituents;
- C) Any actual or potential contamination of drinking water supplies or sensitive ecosystems;
- D) Any further degradation of the groundwater that may occur if remedial action is not initiated expeditiously;
- E) The weather conditions that may cause hazardous constituents to migrate or be released;
- F) Any risks of fire or explosion, or potential for exposure to hazardous constituents as a

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result of an accident or failure of a container or handling system; and

- g) Any other situations that may pose threats to human health and the environment.

b) If an owner or operator determines, based on information developed after implementation of the remedy has begun or other information, that compliance with requirements of Section 811.325(b) are not being achieved through the remedy selected, the owner or operator shall:

1) Implement other methods or techniques that could practicably achieve compliance with the requirements, unless the owner or operator makes the determination under subsection (c) of this Section.

2) Submit to the Agency, prior to implementing any alternative methods pursuant to subsection (b)(1), an application for a significant modification to the permit describing the alternative methods or techniques and how they meet the standards of Section 811.325(b).

c) If the owner or operator determines that compliance with the requirements of Section 811.325(b) cannot be practically achieved with any currently available methods, the owner or operator shall:

1) Obtain the certification of a qualified groundwater scientist or a determination by the Agency that compliance with requirements under Section 811.325(b) cannot be practically achieved with any currently available methods.

2) Implement alternative measures to control exposure of humans or the environment to residual contamination, as necessary to protect human health and the environment.

3) Implement alternative measures for control of the sources of contamination, or for removal or decontamination of equipment, units, devices, or structures that are:

A) Technically practicable; and

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B) Consistent with the overall objective of the remedy.

4) Submit to the Agency, prior to implementing the alternative measures in accordance with subsection (c), an application for a significant modification to the permit justifying the alternative measures.

5) For purposes of this Section, a "qualified groundwater scientist" is a scientist or an engineer who has received a baccalaureate or postgraduate degree in the natural sciences or engineering and has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university programs that enable that individual to make sound professional judgements regarding groundwater monitoring, contaminant fate and transport, and corrective action.

d) All solid wastes that are managed pursuant to a remedy required under Section 811.325, or pursuant to an interim measure required under subsection (a)(3), shall be managed by the owner or operator in a manner:

1) That is protective of human health and the environment; and

2) That complies with applicable requirements of Part 811.

e) Remedies selected pursuant to Section 811.325 shall be considered complete when:

1) The owner or operator complies with the groundwater quality standards established under Section 811.320 at all points within the plume of contamination that lie beyond the zone of attenuation established pursuant to Section 811.320;

2) Compliance with the groundwater quality standards established under Section 811.320 has been achieved by demonstrating that concentrations of the constituents monitored under the assessment monitoring program under Section 811.319(b) have

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not exceed the groundwater quality standards for a period of three consecutive years using the statistical procedures and performance standards in Section 811.320(e). The Agency may specify an alternative time period during which the owner or operator must demonstrate compliance with the groundwater quality standard(s). The Agency shall specify such an alternative time period by considering the following factors:

- A) The extent and concentration of the release(s);
- B) The behavior characteristics of the hazardous constituents in the ground-water;
- C) The accuracy of monitoring or modeling techniques, including any seasonal, meteorological, or other environmental variabilities that may affect the accuracy; and
- D) The characteristics of the ground-water; and

- 3) All actions required to complete the remedy have been satisfied.

f) Within 14 days of the completion of the remedy, the owner or operator shall submit to the Agency an application for a significant modification of the permit including a certification that the remedy has been completed in compliance with the requirements of subsection (e). The certification must be signed by the owner or operator and by a qualified groundwater scientist.

g) Upon Agency review and approval of the certification that the corrective action has been completed, in accordance with subsection (e), the Agency shall release the owner or operator from the financial assurance requirements for corrective action pursuant to Subpart G of this Part.

BOARD NOTE: Requirements of this Section are derived from 40 CFR 258.58 (1992).

(Source: Added in R93-10 at Ill. Reg. _____, effective January 13, 1994)

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SUBPART G: FINANCIAL ASSURANCE

Section 811.700 Scope, Applicability and Definitions

- a) This Subpart provides procedures by which the owner or operator of a permitted waste disposal facility provides financial assurance satisfying the requirements of Section 21.1(a) of the Act.
- b) Financial assurance may be provided, as specified in Section 811.706, by a trust agreement, a bond guaranteeing payment, a bond guaranteeing payment or performance, a letter of credit, insurance or self-insurance. The owner or operator shall provide financial assurance to the Agency before the receipt of the waste.
- c) Except as provided in subsection (f), this Subpart does not apply to the State of Illinois, its agencies and institutions, or to any unit of local government; provided, however, that any other persons who conduct such a waste disposal operation on a site that is owned or operated by such a governmental entity shall provide financial assurance for closure and postclosure care of the site.
- d) The owner or operator is not required to provide financial assurance pursuant to this Subpart if the owner or operator demonstrates:
 - 1) That closure and postclosure care plans filed pursuant to 35 Ill. Adm. Code 724 or 725 will result in closure and postclosure care of the site in accordance with the requirements of this Part; and
 - 2) That the owner or operator has provided financial assurance adequate to provide for such closure and postclosure care pursuant to 35 Ill. Adm. Code 724 or 725.
- e) Definition: "Assumed closure date" means the date during the next permit term on which the costs of premature final closure of the facility, in accordance with the standards of this Part, will be greatest.
- f) On or after April 9, 1995, no person, other than the State of Illinois, its agencies and institutions, shall conduct any disposal operation at a MSWLF unit that

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requires a permit under subsection (d) of Section 21 of the Act, unless that person complies with the financial assurance requirements of this Part.

- g) The standards adopted in this subpart that are identical in substance to the federal subtitle D regulations that are individually indicated as applicable to MSWL units shall not apply to such units until April 9, 1995.

BOARD NOTE: Subsection (f) clarifies the applicability of the financial assurance requirements to local governments since the Subtitle D regulations exempt only federal and state governments from financial assurance requirements (40 CFR 258.70 (1992)).

BOARD NOTE: The compliance dates specified in subsections (f) and (g) reflect the revisions adopted by the USEPA in the Federal Register Notification published on October 1, 1993 (see 58 FR 51536).

(Source: Amended in R93-10 at ___ Ill. Reg. ___, effective January 13, 1994)

Section 811.701 Upgrading Financial Assurance

- a) The owner or operator shall maintain financial assurance equal to or greater than the current cost estimate calculated pursuant to Section 811.704 at all times, except as otherwise provided by subsection (b).
- b) The owner or operator shall increase the total amount of financial assurance so as to equal the current cost estimate within 90 days after any of the following occurrences:
 - 1) An increase in the current cost estimate;
 - 2) A decrease in the value of a trust fund;
 - 3) A determination by the Agency that an owner or operator no longer meets the gross revenue test of Section 811.715(d) or the financial test of Section 811.715(e); or,
 - 4) Notification by the owner or operator that the owner or operator intends to substitute alternative financial assurance, as specified in Section 811.706, for self-insurance.

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- c) The owner or operator of a MSWLF unit shall annually make adjustments for inflation if required pursuant to Section 811.704(k)(2) or 811.705(d).

(Source: Amended in R93-10 at ___ Ill. Reg. ___, effective January 13, 1994)

Section 811.702 Release of Financial Institution

The Agency shall release a trustee, surety, insurer or other financial institution when:

- a) An owner or operator substitutes alternative financial assurance such that the total financial assurance for the site is equal to or greater than the current cost estimate, without counting the amounts to be released; or
- b) The Agency releases the owner or operator from the requirements of this Subpart pursuant to 35 Ill. Adm. Code 813.403(b).

(Source: Amended in R93-10 at ___ Ill. Reg. ___, effective January 13, 1994)

Section 811.703 Application of Proceeds and Appeals

- a) The Agency may sue in any court of competent jurisdiction to enforce its rights under financial instruments. The filing of an enforcement action before the Board is not a condition precedent to such an Agency action, except when this Subpart or the terms of the instrument provide otherwise.
- b) As provided in Titles VIII and IX of the Act and 35 Ill. Adm. Code 103 and 104, the Board may order modifications in permits to change the type or amount of financial assurance pursuant to an enforcement action or a variance petition. Also, the Board may order that an owner or operator modify a closure or postclosure care plan or order that proceeds from financial assurance be applied to the execution of a closure or postclosure care plan.
- c) The following Agency actions may be appealed to the Board as a permit denial pursuant to 35 Ill. Adm. Code 105 and Section 21.5(e) of the Act:

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- 1) A refusal to accept financial assurance tendered by the owner or operator;
- 2) A refusal to release the owner or operator from the requirement to maintain financial assurance;
- 3) A refusal to release excess funds from a trust;
- 4) A refusal to approve a reduction in the penal sum of a bond;
- 5) A refusal to approve a reduction in the amount of a letter of credit;
- 6) A refusal to approve a reduction in the face amount of an insurance policy; or
- 7) A determination that an owner or operator no longer meets the gross revenue test or financial test.

(Source: Amended in R93-10 at — Ill. Reg. —, effective January 13, 1994.)

Section 811.704

Closure and Postclosure Care and Corrective Action Cost Estimates

- a) Written cost estimate. The owner or operator shall have a written estimate of the cost of closure of all parts of the facility where wastes have been deposited in accordance with the requirements of this Part; the written closure plan, required by Section 811.110 and 35 Ill. Adm. Code 812.114; and the cost of postclosure care and plans required by this Part and the written postclosure care plans required by 35 Ill. Adm. Code 812.115. The cost estimate is the total cost for closure and postclosure care.
- b) The owner or operator shall revise the cost estimate whenever a change in the closure plan or postclosure care plan increases the cost estimate.
- c) The cost estimate must be based on the steps necessary for the premature final closure of the facility on the assumed closure date.
- d) The cost estimate must be based on the assumption that the Agency will contract with a third party to implement the closure plan.

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- e) The cost estimate may not be reduced by allowance for the salvage value of equipment or waste, for the resale value of land, or for the sale of landfill gas.
- f) The cost estimate must, at a minimum, include all costs for all activities necessary to close the facility in accordance with all requirements of this Part.
- g) ~~Except for a MSWLF unit, the~~ postclosure monitoring and maintenance cost estimate must be prepared:
 - 1) On the basis of the design period for each unit at a facility, assuming operations will cease on the assumed closure date; and
 - 2) Reduced to present value, as follows:
 - A) Based on a 4 percent discount rate;
 - B) Without allowing for inflation;
 - C) Over a period including the time remaining until the assumed closure date, plus the postclosure care period;
- h) The postclosure care cost estimate must, at a minimum, be based on the following elements in the postclosure care plan:
 - 1) Groundwater monitoring, based on the number of monitoring points and parameters and the frequency of sampling specified in the permit.
 - 2) The annual Cost of Cover Placement and Stabilization, including an estimate of the annual residual settlement and erosion control and the cost of mowing.
 - 3) Alternative Landfill Gas Disposal. If landfill gas is transported to an off-site processing system, then the owner or operator shall include in the cost estimate the costs necessary to operate an on-site gas disposal system, should access to the off-site facility become unavailable. The cost estimate must include the following information: installation, operation, maintenance and monitoring of an on-site gas disposal system.

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- 4) Cost Estimates Beyond the Design Period. When a facility must extend the postclosure care period beyond the applicable design period, the cost estimate must be based upon such additional time and the care activities occurring during that time.
- i) This Section does not authorize the Agency to require the owner or operator to perform any of the indicated activities upon which cost estimates are to be based; however, if the site permit requires a closure activity, the owner or operator shall include the cost of that activity in the cost estimate.
- j) Once the owner or operator has completed an activity, the owner or operator may file an application for significant permit modification pursuant to 35 Ill. Adm. Code 813.201 indicating that the activity has been completed, and zeroing that element of the cost estimate.
- k) Cost estimate for corrective action at MSWLF units.

1) An owner or operator of a MSWLF unit required to undertake a corrective action program pursuant to Section 811.326 shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action in accordance with the Section 811.326. The corrective action cost estimate must account for the total costs of corrective action activities as described in the corrective action plan for the entire corrective action period. The owner or operator shall notify the Agency that the estimate has been placed in the operating record.

2) The owner or operator must annually adjust the estimate for inflation until the corrective action program is completed in accordance with Section 811.326(f).

3) The owner or operator must increase the corrective action cost estimate and the amount of financial assurance provided under paragraph (b) of this section if changes in the corrective action program or MSWLF unit conditions increase the maximum costs of corrective action.

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- 4) The owner or operator may reduce the amount of the corrective action cost estimate and the amount of financial assurance provided pursuant to subsections (k)(5) and (k)(6) of this section if the cost estimate exceeds the maximum remaining costs of corrective action. The owner or operator shall notify the Agency that the justification for the reduction of the corrective action cost estimate and the amount of financial assurance has been placed in the operating record.
- 5) The owner or operator of each MSWLF unit required to undertake a corrective action program under Section 811.326 shall establish, in accordance with Section 811.706, financial assurance for the most recent corrective action program.
- 6) The owner or operator shall provide continuous coverage for corrective action until released from the financial assurance requirements for corrective action by demonstrating compliance with Section 811.326 (f) and (g).

BOARD NOTE: Subsection (k) is derived from 40 CFR 258.73 (1992).

(Source: Amended in R93-10 at ___ Ill. Reg. ___, effective January 13, 1994)

Section 811.705 Revision of Cost Estimate

- a) The owner or operator shall revise the current cost estimates for closure and postclosure care in each new application for permit renewal or where a facility modification results in an increase of the cost estimate.
- b) The owner or operator shall review the closure and postclosure care plans prior to filing a revised cost estimate in order to determine whether they are consistent with current operations, and the requirements of this Subchapter. The owner or operator shall either certify that the plans are consistent, or shall file an application incorporating new plans pursuant to 35 Ill. Adm. Code 813.
- c) The owner or operator shall prepare new closure and postclosure cost estimates reflecting current prices for the items included in the estimates when submitting

any new application for permit renewal. The owner or operator shall file revised estimates even if the owner or operator determines that there are no changes in the prices.

d) The owner or operator of a MSWLF unit shall adjust the cost estimates of closure, postclosure, and corrective action for inflation on an annual basis during the following time period:

- 1) The active life of the unit for closure;
- 2) The active life and postclosure care period, for postclosure; or
- 3) Until the corrective action program is completed in accordance with Section 811.326, for corrective action.

BOARD NOTE: Subsection (d) is derived from 40 CFR 258.71(a)(2) (1992).

(Source: Amended in R93-10 at Ill. Reg. _____, effective January 13, 1994.)

Section 811.706 Mechanisms for Financial Assurance

a) The owner or operator of a waste disposal site may utilize any of the following mechanisms listed in subsections (a)(1) through (a)(6) to provide financial assurance for closure and postclosure care, and for corrective action at a MSWLF unit. An owner or operator of a MSWLF unit shall also meet the requirements of subsections (b), (c) and (d). The mechanisms are as follows:

- a1) A trust fund (Section 811.710);
- b2) A surety Bond Guaranteeing Payment (Section 811.711);
- e3) A surety Bond Guaranteeing Performance (Section 811.712);
- d4) A letter of Credit (Section 811.713);
- e5) Closure Insurance (Section 811.714); or
- f6) Self-insurance (Section 811.715).

designated location within the facility. The facility shall conduct a detailed inspection of the discharged material for any regulated hazardous, or other unacceptable wastes that may be present. Cameras or other devices may be used to record the visible contents of solid waste shipments. Where such devices are employed, their use should be designated on a sign posted near the entrance to the facility.

- B) If regulated hazardous wastes or other unacceptable wastes are suspected, the facility shall communicate with the generator, hauler or other party responsible for shipping the waste to the facility to determine the identity of the waste.

2) Recording inspection results

Information and observations derived from each random inspection shall be recorded in writing and retained at the facility for at least three years. The recorded information shall include, at a minimum, the date and time of the inspection; the names of the hauling firm and the driver of the vehicle; the vehicle license plate number; the source of the waste, as stated by the driver; and observations made by the inspector during the detailed inspection. The written record shall be signed by both the inspector and the driver.

3) Training

The solid waste management facility shall train designated inspectors, equipment operators, weigh station attendants, spotters at large facilities, and all other appropriate facility personnel in the identification of potential sources of regulated hazardous wastes and other unacceptable wastes, including but not limited to PCBs. The training program shall emphasize familiarity with containers typically used for regulated hazardous wastes and with labels for regulated hazardous wastes, under RCRA, and for hazardous materials under the Hazardous Materials Transportation Act (49 U.S.C. 1801 et. seq.).

ed) Handling Regulated Hazardous Wastes

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- 1) If any regulated hazardous wastes are identified by random load checking, or are otherwise discovered to be improperly deposited at the facility, the facility shall promptly notify the Agency, the person responsible for shipping the wastes to the landfill, and the generator of the wastes, if known. Waste loads identical to the regulated hazardous waste identified through the random load checking which have not yet been deposited in the landfill shall not be accepted. The area where the wastes are deposited shall immediately be cordoned off from public access. The solid waste management facility shall assure the cleanup, transportation and disposal of the waste at a permitted hazardous waste management facility.
- 2) The party responsible for transporting the waste to the solid waste management facility shall be responsible for the costs of such proper cleanup, transportation and disposal.
- 3) Subsequent shipments by persons or sources found or suspected to be previously responsible for shipping regulated hazardous waste shall be subject to the following special precautionary measures prior to the solid waste management facility accepting wastes. The operator shall use precautionary measures such as questioning the driver concerning the waste contents prior to discharge and visual inspection during the discharge of the load at the working face or elsewhere.

(Source: Amended in R93-10 at ___ Ill. Reg. ___, effective January 13, 1994)

Section 811.324 Corrective Action Measures for MSWLF Units

- a) The owner or operator shall initiate an assessment of corrective action measures within 14 days of the following:
 - 1) The groundwater impact assessment, performed in accordance with subsection 811.319 (c), indicates that remedial action is needed; or

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- 2) The assessment monitoring, performed in accordance with subsection 811.319(b), indicates that a confirmed increase above the applicable groundwater quality standards of Section 811.320 is attributable to the solid waste disposal facility.
- b) The owner or operator shall complete the corrective action assessment within 90 days of initiating the assessment of corrective action measures in accordance with subsection (a).
- c) The owner or operator shall continue to monitor in accordance with the assessment monitoring program, as specified in Section 811.319(b).
- d) The assessment shall include an analysis of the effectiveness of various potential corrective action measures in meeting all of the requirements and objectives of the remedy, as described under Section 811.325, addressing at least the following:
 - 1) The performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts, and control of exposure to any residual contamination;
 - 2) The time required to begin and complete the remedy;
 - 3) The costs of remedy implementation; and
 - 4) The institutional requirements, such as State or local permit requirements or other environmental or public health requirements, that may substantially affect implementation of the remedies.
- e) The owner or operator must discuss the results of the corrective action measures assessment prior to the selection of a remedy in a public meeting with interested and affected parties. Prior to the public meeting, the owner or operator of the MSWLF unit shall submit to the Agency a report describing the results of the corrective action measures assessment.

BOARD NOTE: Requirements of this Section are derived from 40 CFR 258.56 (1993).

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(Source: Added in R93-10 at ___ Ill. Reg. ___, effective January 13, 1994)

Section 811.325 Selection of remedy for MSWLF Units

- a) Within 90 days of the completion of the corrective action measures assessment conducted under Section 811.324, the owner or operator of a MSWLF unit shall:
 - 1) Select a remedy based on the assessment results that, at a minimum, meets the requirements of subsection (b); and
 - 2) Submit to the Agency an application for a significant modification to the landfill permit describing the selected remedy and how it meets the standards set forth in subsection (b).
- b) Remedies selected under this Section must meet the following requirements:
 - 1) They must be protective of human health and the environment;
 - 2) They must attain the groundwater quality standards prescribed at Section 811.320;
 - 3) They must control the sources of release so as to reduce or eliminate, to the maximum extent practicable, further releases of constituents detected under the assessment monitoring into the environment that may pose a threat to human health or the environment; and
 - 4) They must comply with standards for management of wastes as specified in Section 811.326(d).
- c) In selecting a remedy that meets the requirements of subsection (b), the owner or operator shall consider the following evaluation factors:
 - 1) The long- and short-term effectiveness and protectiveness of the potential remedies, along with the degree of certainty that the remedy will prove successful based on consideration of the following factors:
 - A) The magnitude of reduction of existing risks;

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- B) The magnitude of residual risks in terms of likelihood of further releases due to waste remaining following implementation of a remedy;
 - C) The type and degree of long-term management required, including monitoring, operation, and maintenance;
 - D) Any short-term risks that might be posed to the community, workers, or the environment during implementation of such a remedy, including potential threats to human health and the environment associated with excavation, transportation, and redisposal or containment;
 - E) The length of time until full protection is achieved;
 - F) Any potential for exposure of humans and environmental receptors to remaining wastes, considering the potential threat to human health and the environment associated with excavation, transportation, redisposal, or containment;
 - G) The long-term reliability of engineering and institutional controls; and
 - H) The potential need for replacement of the remedy.
- 2) The effectiveness of the remedy in controlling the source to reduce further releases based on consideration of the following factors:
 - A) The extent to which containment practices will reduce further releases; and
 - B) The extent to which treatment technologies may be used.
 - 3) The ease or difficulty of implementing potential remedies based on consideration of the following types of factors:
 - A) The degree of difficulty associated with constructing the technology;

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- B) The expected operational reliability of the technologies;
- C) The need to coordinate with and obtain necessary approvals and permits from other agencies;
- D) The availability of necessary equipment and specialists; and
- E) The available capacity and location of needed treatment, storage, and disposal services.
- 4) The practicable capability of the owner or operator to implement the remedies, including a consideration of the technical and economic capability.
- 5) The degree to which community concerns are addressed by potential remedies.
- d) Schedule for implementing remedial action.
- 1) The owner or operator shall specify as part of the selected remedy a schedule(s) for initiating and completing remedial activities. Such a schedule must require the initiation of remedial activities within a reasonable period of time, taking into consideration the factors set forth in subsections (d)(3)(A) through (d)(3)(H).
- 2) The Agency shall specify the time period for initiating remedial action in the facility's permit.
- 3) The owner or operator shall consider the following factors in determining the schedule of remedial activities:
- A) The extent and nature of contamination;
- B) The practical capabilities of remedial technologies in achieving compliance with the groundwater quality standards established under Section 811.320 and other objectives of the remedy;

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- C) The availability of treatment or disposal capacity for wastes managed during implementation of the remedy;
- D) The desirability of utilizing technologies that are not currently available, but which may offer significant advantages over already available technologies in terms of effectiveness, reliability, safety, or ability to achieve remedial objectives;
- E) Any potential risks to human health and the environment from exposure to contamination prior to completion of the remedy;
- F) Any resource value of the aquifer including:
- i) Any current and future uses;
- ii) The proximity and withdrawal rate of users;
- iii) The ground-water quantity and quality;
- iv) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituent;
- v) The hydrogeologic characteristic of the facility and surrounding land;
- vi) The ground-water removal and treatment costs;
- vii) The cost and availability of alternative water supplies;
- G) The practicable capability of the owner or operator to implement the remedies; and
- H) Any other relevant factors.
- e) The Agency shall determine that remediation of a release of one or more constituents monitored in accordance with Section 811.319 from a MSWLF unit is not necessary if the owner or operator demonstrates to the Agency that:

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1) The groundwater is additionally contaminated by substances that have originated from a source other than the MSWLF unit and those substances are present in such concentrations that cleanup of the release from the MSWLF unit would provide no significant reduction in risk to actual or potential receptors; or

2) The constituents are present in groundwater that:

A) Is not currently or reasonably expected to be a source of drinking water; and

B) Is not hydraulically connected with waters to which the hazardous constituents are migrating or are likely to migrate in concentrations that would exceed the groundwater quality standards established under Section 811.320; or

3) The remediation of the release is technically impracticable; or

4) The remediation results in unacceptable cross-media impacts.

f) A determination by the Agency pursuant to subsection (e) shall not affect the Agency's authority to require the owner or operator to undertake source control measures or other measures that may be necessary to eliminate or minimize further releases to the groundwater, to prevent exposure to the groundwater, or to remediate the groundwater to concentrations that are technically practicable and which reduce threats to human health or the environment.

BOARD NOTE: The requirements of this Section are derived from 40 CFR 258.57 (1992).

(Source: Added in R93-10 at ___ Ill. Reg. ___, effective January 13, 1994)

Section 811.326 Implementation of the corrective action program at MSWLF Units

a) Based on the schedule established under section 811.325(d) for initiation and completion of corrective action, the owner or operator shall:

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b) The owner or operator of a MSWLF unit shall ensure that the language of the mechanisms listed in subsection (a), when used for providing financial assurance for closure, postclosure, and corrective action, satisfies the following:

1) The amount of funds assured is sufficient to cover the costs of closure, post-closure care, and corrective action; and

2) The funds will be available in a timely fashion when needed.

3) The financial assurance mechanisms shall be legally valid, binding, and enforceable under state and federal law.

c) The owner or operator of a MSWLF unit shall provide financial assurance utilizing one or more of the mechanisms listed in subsection (a) within the following dates:

1) By April 9, 1995 (the effective date of these requirements) or prior to the initial receipt of solid waste, whichever is later, in the case of closure and post-closure care; or

2) No later than 120 days after the remedy has been selected in accordance with the requirements of Section 811.325, in the case of corrective action.

d) The owner or operator shall provide continuous coverage until the owner or operator is released from the financial assurance requirements pursuant to 35 Ill. Adm. Code 813.403(b) or Section 811.326.

Board Note. Subsections (b) and (c) are derived from 40 CFR 258.74(l) (1992).

(Source: Amended in R93-10 at ___ Ill. Reg. ___, effective January 13, 1994)

Section 811.707 Use of Multiple Financial Mechanisms

An owner or operator may satisfy the requirements of this Subpart by establishing more than one financial mechanism per site. These mechanisms are limited to trust funds, surety bonds guaranteeing payment, letters of credit and insurance. The

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mechanisms must be as specified in 35 Ill. Adm. Code 811.710, 811.711, 811.713 and 811.714, respectively, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current cost estimate. The owner or operator may use any or all of the mechanisms to provide for closure and postclosure care of the site or corrective action.

(Source: Amended in R93-10 at ___ Ill. Reg. ___, effective January 13, 1994)

Section 811.708 Use of a Financial Mechanism for Multiple Sites

An owner or operator may use a financial assurance mechanism specified in this Subpart to meet the requirements of this Subpart for more than one site. Evidence of financial assurance submitted to the Agency must include a list showing, for each site, the name, address and the amount of funds assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each site. The amount of funds available to the Agency must be sufficient to close and provide postclosure care for all of the owner or operator's sites. In directing funds available through a single mechanism for the closure and postclosure care of any single site covered by that mechanism, the Agency shall direct only that amount of funds designated for that site, unless the owner or operator agrees to the use of additional funds available under that mechanism.

(Source: Amended in R93-10 at ___ Ill. Reg. ___, effective January 13, 1994)

Section 811.709 Trust Fund for Unrelated Sites

Any person may establish a trust fund for the benefit of the Agency which may receive funds from more than one owner or operator for closure of different sites. Such a trust fund must operate like the trust fund specified in 35 Ill. Adm. Code 807.710, except as follows:

- a) The trustee shall maintain a separate account for each site and shall evaluate such annually as of the day of creation of the trust;
- b) The trustee shall annually notify each owner or operator and the Agency of the evaluation of each owner or operator's account;

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- c) The trustee shall release excess funds as required from the account for each site;
- d) The trustee shall reimburse the owner or operator or other person authorized to perform closure or postclosure care only from the account for that site.
- e) The Agency may direct the trustee to withhold payments only from the account for the site for which it has determined the cost of closure and postclosure care will be greater than the value of the account for that site pursuant to Section 811.710(g)(3).

(Source: Amended in R93-10 at ___ Ill. Reg. ___, effective January 13, 1994)

Section 811.710 Trust Fund

- a) An owner or operator may satisfy the requirements of this Subpart by establishing a trust fund which conforms to the requirements of this Section and submitting an original signed duplicate of the trust agreement to the Agency.
- b) The trustee shall be an entity which has the authority to act as a trustee and:
 - 1) Whose trust operations are examined by the Illinois Commissioner of Banks and Trust Companies pursuant to the Illinois Banking Act (Ill. Rev. Stat. 19891, ch. 17, pars. 301 et. seq. [205 ILCS 5/1 et. seq.]); or
 - 2) Who complies with the Corporate Fiduciary Act (Ill. Rev. Stat. 19891, ch. 17, pars. 1551-1 et. seq. [205 ILCS 620/1-1 et. seq.]).
- c) The trust agreement must be on the forms specified in Appendix A, Illustration A, and the trust agreement must be accompanied by a formal certification of acknowledgment, on the form specified in Appendix A, Illustration B.
- d) Payments into the trust:
 - 1) For closure and post-closure care;

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4A) The owner or operator shall make a payment into the trust fund each year during the pay-in period.

4B) The pay-in period is the number of years remaining until the assumed closure date.

4C) Annual payments are determined by the following formula:

$$\text{Annual payment} = (CE - CV) / Y$$

where:

CE = Current cost estimate

CV = Current value of the trust fund

Y = Number of years remaining in the pay in period.

4D) The owner or operator shall make the first annual payment prior to the initial receipt of waste for disposal. The owner or operator shall also, prior to such initial receipt of waste, submit to the Agency a receipt from the trustee for the first annual payment.

5E) Subsequent annual payments must be made no later than 30 days after each anniversary of the first payment.

6E) The owner or operator may accelerate payments into the trust fund, or may deposit the full amount of the current cost estimate at the time the fund is established.

7G) An owner or operator required to provide additional financial assurance for an increase in the cost estimate because of an amendment to this Subchapter may provide such additional financial assurance pursuant to this subsection. The owner or operator may provide the increase by contributing to a new or existing trust fund pursuant to this section. Subsection (d)(2) notwithstanding, the pay-in period for such additional financial assurance shall be not less than three years.

2) For corrective action at MSWLF units:

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A) The owner or operator shall make payments into the trust fund annually over one-half of the estimated length of the corrective action program in the case of corrective action for known releases. This period is referred to as the pay-in period.

B) The owner or operator shall make the first payment into the trust fund equal to at least one-half of the current cost estimate for corrective action divided by the number of years in the corrective action pay-in period, as defined in subsection (d)(2)(A) of this section. The amount of subsequent payments must be determined by the following formula:

$$\text{Next payment} = (RB - CV) / Y$$

where:

RB = Most recent estimate of the required trust fund balance for corrective action (i.e., the total costs that will be incurred during the second half of the corrective action period);

CV = Current value of the trust fund; and

Y = Number of years remaining in the pay-in period.

C) The owner or operator shall make the initial payment into the trust fund no later than 120 days after the remedy has been selected in accordance with the requirements of section 811.325.

Board Note. Changes to subsection (d) are derived from 40 CFR 258.74 (a)(2), (a)(4), and (a)(5) (1992).

e) The trustee shall evaluate the trust fund annually, as of the day the trust was created or on such earlier date as may be provided in the agreement. The trustee

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shall notify the owner or operator and the Agency of the value within 30 days after the evaluation date.

- f) If the owner or operator of a MSWLF unit establishes a trust fund after having used one or more alternative mechanisms specified in this Subpart, the initial payment into the trust fund must be at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of this Section.

Board Note. Subsection (f) is derived from 40 CFR 258.74 (a)(6) (1992).

fg) Release of excess funds:

- 1) If the value of the financial assurance is greater than the total amount of the current cost estimate, the owner or operator may submit a written request to the Agency for a release of the amount in excess of the current cost estimate.
- 2) Within 60 days after receiving a request from the owner or operator for a release of funds, the Agency shall instruct the trustee to the owner or operator such funds as the Agency specifies in writing to be in excess of the current cost estimate.

gh) Reimbursement for closure, and postclosure care and corrective action expenses:

- 1) After initiating closure or corrective action, an owner or operator, or any other person authorized to perform closure or postclosure care or corrective action, may request reimbursement for closure or postclosure care or corrective action expenditures, by submitting itemized bills to the Agency.
- 2) Within 60 days after receiving the itemized bills for closure or postclosure care activities or corrective action, the Agency shall determine whether the expenditures are in accordance with the closure or postclosure care or corrective action plan. The Agency shall instruct the trustee to make reimbursement in such amounts as the Agency specifies in writing as expenditures in

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accordance with the closure or postclosure care or corrective action plan.

- 3) If the Agency determines, based on such information as is available to it, that the cost of closure and postclosure care or corrective action will be greater than the value of the trust fund, it shall withhold reimbursement of such amounts as it determines are necessary to preserve the fund in order to accomplish closure and postclosure care or corrective action until it determines that the owner or operator is no longer required to maintain financial assurance for closure and postclosure care or corrective action. In the event the fund is inadequate to pay all claims, the Agency shall pay claims according to the following priorities:
 - A) Persons with whom the Agency has contracted to perform closure or postclosure care or corrective action activities (first priority);
 - B) Persons who have completed closure or postclosure care or corrective action authorized by the Agency (second priority);
 - C) Persons who have completed work which furthered the closure or postclosure care or corrective action (third priority);
 - D) The owner or operator and related business entities (last priority).

(Source: Amended in R93-10 at ___ Ill. Reg. ___, effective January 13, 1994)

Section 811.711 Surety Bond Guaranteeing Payment

- a) An owner or operator may satisfy the requirements of this Subpart by obtaining a surety bond which conforms to the requirements of this Section and submitting the bond to the Agency. A surety bond obtained by an owner or operator of a MSWLF unit must be effective before the initial receipt of waste or before April 9, 1995 (the effective date of the financial assurance requirements under RCRA Subtitle D regulations), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the

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remedy has been selected in accordance with the requirements of Section 811.325.

- b) The surety company issuing the bond shall be licensed by the Illinois Department of Insurance pursuant to the Illinois Insurance Code (Ill. Rev. Stat. 1989), ch. 73, pars. 613 et. seq. [215 ILCS 5/1 et. seq.] and approved by the U.S. Department of the Treasury as an acceptable surety.

BOARD NOTE: The U.S. Department of the Treasury lists acceptable sureties in its Circular 570.

- c) The surety bond must be on the forms specified in Appendix A, Illustration C, D or H of this Part.
- d) Any payments made under the bond will be placed in the landfill closure and postclosure fund within the State Treasury.

e) Conditions:

- 1) The bond must guarantee that the owner or operator will provide closure and postclosure care in accordance with the approved closure and postclosure care plans. If the facility is a MSWLF unit, then the corrective action bond must guarantee that the owner or operator will implement corrective action in accordance with Section 811.326.

- 2) The surety will become liable on the bond obligation when, during the term of the bond, the owner or operator fails to perform as guaranteed by the bond. The owner or operator fails to perform when the owner or operator:

- A) Abandons the site;
- B) Is adjudicated bankrupt;
- C) Fails to initiate closure of the site or postclosure care or corrective action when ordered to do so by the Board pursuant to title VII of the Act, or when ordered to do so by a court of competent jurisdiction; or
- D) Notifies the Agency that it has initiated closure or corrective action, or initiates

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closure or corrective action, but fails to close the site or provide postclosure care or corrective action in accordance with the closure and postclosure care or corrective action plans; or

- E) For a corrective action bond, fails to implement corrective action at a MSWLF unit in accordance with Section 811.326

f) Penal sum:

- 1) The penal sum of the bond must be in an amount at least equal to the current cost estimate.
- 2) The Agency shall approve a reduction in the penal sum whenever the current cost estimate decreases.

g) Term:

- 1) The bond must be issued for a term of at least five years and must not be cancelable during that term.
- 2) If the owner or operator fails to provide substitute financial assurance prior to expiration of a bond, the term of the bond must be automatically extended for one twelve-month period starting with the date of expiration of the bond. During such extension the bond will cease to serve as financial assurance satisfying the requirements of this Part, and will not excuse the owner or operator from the duty to provide substitute financial assurance.

h) Cure of default and refunds:

- 1) The Agency shall release the surety if, after the surety becomes liable on the bond, the owner or operator or another person provides financial assurance for closure and postclosure care of the site or corrective action program at a MSWLF unit, unless the Agency determines that the closure or postclosure care plan, corrective action at a MSWLF unit or the amount of substituted financial assurance is inadequate to provide closure and postclosure care or implement corrective action in compliance with this Part.

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- 2) After closure and postclosure care have been completed in accordance with the plans and requirements of this Part or after the completion of corrective action at a MSWLF unit in accordance with Section 811.326, the Agency shall refund any unspent money which was paid into the "Landfill Closure and Postclosure Fund" Agency by the surety.

BOARD NOTE: Corrective action language at subsection (a) is derived from 40 CFR 258.74(b)(1) (1992). The other clarifying changes reflect the inclusion of financial assurance requirements for implementing corrective action at MSWLF units under this Section.

(Source: Amended in R93-10 at Ill. Reg. _____, effective January 13, 1994)

Section 811.712 Surety Bond Guaranteeing Performance

- a) An owner or operator may satisfy the requirements of this Subpart by obtaining a surety bond which conforms to the requirements of this Section and submitting the bond to the Agency. A surety bond obtained by an owner or operator of a MSWLF unit must be effective before the initial receipt of waste or before April 9, 1995 (the effective date of the financial assurance requirements under RCRA Subtitle D regulations), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the remedy has been selected in accordance with the requirements of Section 811.325.

- b) The surety company issuing the bond shall be licensed by the Illinois Department of Insurance pursuant to the Illinois Insurance Code (Ill. Rev. Stat. 1991, ch. 73, pars. 613 et. seq. [215 ILCS 5/1 et. seq.]) and approved by the U.S. Department of the Treasury as an acceptable surety.

BOARD NOTE: The U.S. Department of the Treasury lists acceptable sureties in its Circular 570.

- c) The surety bond must be on the forms as specified in Appendix A, Illustration C, D or H of this Part.

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- d) Any payments made under the bond will be placed in the landfill closure and postclosure fund within the State Treasury.
- e) Conditions:
- 1) The bond must guarantee that the owner or operator will provide closure and postclosure care in accordance with the closure and postclosure care plans in the permit. If the facility is a MSWLF unit, then a corrective action bond must guarantee that the owner or operator will implement corrective action in accordance with Section 811.326. The surety shall have the option of providing closure and postclosure care in accordance with the closure and postclosure care plans or carrying out corrective action, or of paying the penal sum.

- 2) The surety will become liable on the bond obligation when, during the term of the bond, the owner or operator fails to perform as guaranteed by the bond. The owner or operator fails to perform when the owner or operator:

- A) Abandons the site;
- B) Is adjudicated bankrupt;
- C) Fails to initiate closure of the site or postclosure care or corrective action when ordered to do so by the Board pursuant to Title VII of the Act, or when ordered to do so by a court of competent jurisdiction; or
- D) Notifies the Agency that it has initiated closure or corrective action, or initiates closure or corrective action, but fails to close the site or provide postclosure care or corrective action in accordance with the closure and postclosure care or corrective action plans.

- E) For a corrective action bond, fails to implement corrective action at a MSWLF unit in accordance with Section 811.326

- f) Penal sum:

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- 1) The penal sum of the bond must be in an amount at least equal to the current cost estimate.
- 2) The Agency shall approve a reduction in the penal sum whenever the current cost estimate decreases.
- g) Term:
 - 1) The bond must be issued for a term of at least five years and must not be cancelable during that term.
 - 2) If the owner or operator fails to provide substitute financial assurance prior to expiration of a bond, the term of the bond must be automatically extended for one twelve-month period starting with the date of expiration of the bond. During such extension, the bond will cease to serve as financial assurance satisfying the requirements of this Part, and will not excuse the owner or operator from the duty to provide substitute financial assurance.
- h) Cure of default and refunds:
 - 1) The Agency shall release the surety if, after the surety becomes liable on the bond, the owner or operator or another person provides financial assurance for closure and postclosure care of the site or corrective action at a MSWLF unit, unless the Agency determines that the closure or postclosure care plan, corrective action at a MSWLF unit, or the amount of substituted financial assurance is inadequate to provide closure and postclosure care or implement corrective action at a MSWLF unit in compliance with this Part.
 - 2) After closure and postclosure care have been completed in accordance with the closure and postclosure care plans and the requirements of this Part or after the completion of corrective action at a MSWLF unit in accordance with Section 811.326, the Agency shall refund any unspent money which was paid into the "Landfill Closure and Postclosure Fund" Agency by the surety.
- i) The surety will not be liable for deficiencies in the performance of closure by the owner or operator after

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the Agency releases the owner or operator from the requirements of this Subpart.

BOARD NOTE: MSWLF corrective action language at subsection (a) is derived from 40 CFR 258.74 (b)(1) (1992). The other clarifying changes reflect the inclusion of financial assurance requirements for implementing corrective action at MSWLF units under this Section.

(Source: Amended in R93-10 at Ill. Reg. _____, effective January 13, 1994)

Section 811.713 Letter of Credit

- a) An owner or operator may satisfy the requirements of this Subpart by obtaining an irrevocable standby letter of credit which conforms to the requirements of this Section and submitting the letter to the Agency. A letter of credit obtained by an owner or operator of a MSWLF unit must be effective before the initial receipt of waste or before April 9, 1995 (the effective date of the financial assurance requirements under RCRA Subtitle D regulations), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the remedy has been selected in accordance with the requirements of Section 811.325.
 - The issuing institution shall be an entity which has the authority to issue letters of credit and:
 - 1) Whose letter-of-credit operations are regulated by the Illinois Commissioner of Banks and Trust Companies pursuant to the Illinois Banking Act (Ill. Rev. Stat. 1991, ch. 17, pars. 301 et. seq. [205 ILCS 5/1 et. seq.]); or,
 - 2) Whose deposits are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.
- b)
 - Forms:
 - 1) The letter of credit must be on the forms specified in Appendix A, Illustration E.
 - 2) The letter of credit must be accompanied by a letter from the owner or operator, referring to the letter of credit by number, the name and

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address of the issuing institution, and the effective date of the letter, and providing the following information: the name and address of the site and the amount of funds assured for closure and postclosure care of the site, or for corrective action at a MSWLF unit by the letter of credit.

d) Any amounts drawn by the Agency pursuant to the letter of credit will be deposited in the landfill closure and postclosure fund within the State Treasury.

e) Conditions on which the Agency may draw on the letter of credit:

1) The Agency shall draw on the letter of credit if the owner or operator fails to perform closure or postclosure care in accordance with the closure and postclosure care plans, or fails to implement corrective action at a MSWLF unit in accordance with Section 811.326.

2) The Agency shall draw on the letter of credit when the owner or operator:

- A) Abandons the site;
- B) Is adjudicated bankrupt;
- C) Fails to initiate closure of the site or postclosure care or corrective action when ordered to do so by the Board pursuant to Title VII of the Act, or when ordered to do so by a court of competent jurisdiction; or
- D) Notifies the Agency that it has initiated closure or corrective action, or initiates closure or corrective action, but fails to provide closure and postclosure care or corrective action in accordance with the closure and postclosure care or corrective action plans.

E) For a corrective action bond, falls to implement corrective action at a MSWLF unit in accordance with Section 811.326

f) Amount:

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1) The letter of credit must be issued in an amount at least equal to the current cost estimate.

2) The Agency shall approve a reduction in the amount whenever the current cost estimate decreases.

g) Term:

1) The letter of credit must be issued for a term of at least five years and must be irrevocable during that term.

2) If the owner or operator fails to substitute alternative financial assurance prior to expiration of a letter of credit, the term of the letter of credit must be automatically extended for one twelve-month period starting with the date of expiration. During such extension, the letter of credit will cease to serve as financial assurance satisfying the requirements of this Part, and will not excuse the owner or operator from the duty to provide substitute financial assurance.

h) Cure of default and refunds:

1) The Agency shall release the financial institution if, after the Agency is allowed to draw on the letter of credit, the owner or operator or another person provides financial assurance for closure and postclosure care of the site or corrective action at a MSWLF unit, unless the Agency determines that a plan or the amount of substituted financial assurance is inadequate to provide closure and postclosure care, or implement corrective action at a MSWLF unit, as required by this Part.

2) After closure and postclosure care have been completed in accordance with the closure and postclosure care plans and the requirements of this Part or after the completion of corrective action at a MSWLF unit in accordance with Section 811.326, the Agency shall refund any unspent money which was paid into the "Landfill Closure and Postclosure Fund" Agency by the financial institution.

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BOARD NOTE: MSWLF corrective action language at subsection (a) is derived from 40 CFR 258.74 (c)(1) (1992). The other clarifying changes reflect the inclusion of financial assurance requirements for implementing corrective action at MSWLF units under this Section.

(Source: Amended in R93-10 at ___ Ill. Reg. ___, effective January 13, 1994)

Section 811.714 Closure Insurance

- a) An owner or operator may satisfy the requirements of this Subpart by obtaining closure and postclosure care insurance which conforms to the requirements of this Section and submitting an executed duplicate original of such insurance policy to the Agency.
- b) The insurer shall be licensed to transact the business of insurance by the Illinois Department of Insurance pursuant to the Illinois Insurance Code (Ill. Rev. Stat. 1991, ch. 73, pars. 613 et. seq. [215 ILCS 5/1 et. seq.]).
- c) The policy must be on forms approved by the Illinois Department of Insurance pursuant to the Illinois Insurance Code.

d) Face amount:

- 1) The closure and postclosure care insurance policy must be issued for a face amount at least equal to the current cost estimate. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

- 2) The Agency shall approve a reduction in the amount of the policy whenever the current cost estimate decreases.

- e) The closure and postclosure care insurance policy must guarantee that funds will be available to close the site and to provide postclosure care thereafter. The policy must also guarantee that, once closure begins, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy,

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upon the direction of the Agency to such party or parties as the Agency specifies. The insurer will be liable when:

- 1) The owner or operator abandons the site;
- 2) The owner or operator is adjudicated bankrupt;
- 3) The Board, pursuant to Title VIII of the Act, or a court of competent jurisdiction orders the site closed;
- 4) The owner or operator notifies the Agency that it is initiating closure; or
- 5) Any person initiates closure with approval of the Agency.

f) Reimbursement for closure and postclosure care expenses:

- 1) After initiating closure, an owner or operator or any other person authorized to perform closure or postclosure care may request reimbursement for closure and postclosure care expenditures by submitting itemized bills to the Agency.
- 2) Within 60 days after receiving bills for closure or postclosure care activities, the Agency shall determine whether the expenditures are in accordance with the closure or postclosure care plan. The Agency shall direct the insurer to make reimbursement in such amounts as the Agency specifies in writing as expenditures in accordance with the closure and postclosure care plans.
- 3) If the Agency determines based on such information as is available to it that the cost of closure and postclosure care will be greater than the face amount of the policy, it shall withhold reimbursement of such amounts as it deems prudent until it determines that the owner or operator is no longer required to maintain financial assurance. In the event the face amount of the policy is inadequate to pay all claims, the Agency shall pay claims according to the following priorities:

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- A) Persons with whom the Agency has contracted to perform closure or postclosure care activities (first priority);
- B) Persons who have completed closure or postclosure care authorized by the Agency (second priority);
- C) Persons who have completed work which furthered the closure or postclosure care (third priority);
- D) The owner or operator and related business entities (last priority).

g) Cancellation:

- 1) The owner or operator shall maintain the policy in full force and effect until the Agency releases the insurer pursuant to Section 811.702.
- 2) The policy must provide that the insurer may not cancel, terminate or fail to renew the policy, except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate or fail to renew the policy by sending notice by certified mail to the owner or operator and the Agency. Cancellation, termination or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Agency and the owner or operator, as evidenced by the return receipts. Cancellation, termination or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration the premium due is paid.

- h) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

(Source: Amended in R93-10 at ___ Ill. Reg. ___, effective January 13, 1994)

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Section 811.715 Self-Insurance for Non-commercial Sites

- a) Definitions. The following definitions are intended to assist in the understanding of this Part and are not intended to limit the meanings of terms in any way that conflicts with generally accepted accounting principles:

"Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

"Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

"Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

"Generally accepted accounting principles" means Auditing Standards--Current Text, incorporated by reference at 35 Ill. Adm Code 810.104.

"Gross Revenue" means total receipts less returns and allowances.

"Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

"Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

"Net working capital" means current assets minus current liabilities.

"Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

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"Tangible net worth" means tangible assets less liabilities; tangible assets do not include intangibles such as goodwill and rights to patents or royalties.

b) Information to be Filed

An owner or operator may satisfy the financial assurance requirements of this Part by providing the following:

- 1) Bond without surety promising to pay the cost estimate (subsection (c)).
 - 2) Proof that the owner or operator meets the gross revenue test (subsection (d)).
 - 3) Proof that the owner or operator meets the financial test (subsection (e)).
- c) Bond Without Surety. An owner or operator utilizing self-insurance shall provide a bond without surety on the forms specified in Appendix A, Illustration G. The owner or operator shall promise to pay the current cost estimate to the Agency unless the owner or operator provides closure and postclosure care in accordance with the closure and postclosure care plans.
- d) Gross Revenue Test. The owner or operator shall demonstrate that less than one-half of its gross revenues are derived from waste disposal operations. Revenue is "from waste disposal operations" if it would stop upon cessation of the owner or operator's waste disposal operations.

e) Financial Test

- 1) To pass the financial test, the owner or operator shall meet the criteria of either subsection (e)(1)(A) or (e)(1)(B):

A) The owner or operator shall have:

- i) Two of the following three ratios: a ratio of total liabilities to net worth of less than 2.0; a ratio of the sum of net income plus depreciation, depletion and amortization to total liabilities of greater than 0.1; or a ratio of current

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assets to current liabilities of greater than 1.5; and

- ii) Net working capital and tangible net worth each at least six times the current cost estimate; and
 - iii) Tangible net worth of at least \$10 million; and
 - iv) Assets in the United States amounting to at least 90 percent of the owner or operator's total assets and at least six times the current cost estimate.
- B) The owner or operator shall have:
- i) A current rating of AAA, AA, A or BBB for its most recent bond issuance as issued by Standard and Poor, or a rating of Aaa, Aa, A or Baa, as issued by Moody; and
 - ii) Tangible net worth at least six times the current cost estimate; and
 - iii) Tangible net worth of at least \$10 million; and
 - iv) Assets located in the United States amounting to at least 90 percent of its total assets or at least six times the current cost estimate.

- 2) To demonstrate that it meets this test, the owner or operator shall submit the following items to the Agency:

- A) A letter signed by the owner or operator's chief financial officer and worded as specified in Appendix A, Illustration I; and
- B) A copy of the independent certified public accountant's report on examination of the owner or operator's financial statements for the latest completed fiscal year; and

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- c) A special report from the owner or operator's independent certified public accountant to the owner or operator stating that:

- i) The accountant has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and
- ii) In connection with that procedure, no matters came to the accountant's attention which caused the accountant to believe that the specified data should be adjusted.

f) Updated Information.

- 1) After the initial submission of items specified in subsections (d) and (e), the owner or operator shall send updated information to the Agency within 90 days after the close of each succeeding fiscal year.
- 2) If the owner or operator no longer meets the requirements of subsections (d) and (e), the owner or operator shall send notice to the Agency of intent to establish alternative financial assurance. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements.

- g) Qualified Opinions. If the opinion required by subsections (e)(2)(B) and (e)(2)(C) includes an adverse opinion or a disclaimer of opinion, the Agency shall disallow the use of self-insurance. If the opinion includes other qualifications, the Agency shall disallow the use of self-insurance if:

- 1) The qualifications relate to the numbers which are used in the gross revenue test or the financial test; and,

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- 2) In light of the qualifications, the owner or operator has failed to demonstrate that it meets the gross revenue test or financial test.
- h) Parent Corporation. An owner or operator may satisfy the financial assurance requirements of this part by demonstrating that a corporation which owns an interest in the owner or operator meets the gross revenue and financial tests. The owner or operator shall also provide a bond with the parent as surety (Appendix A, Illustration H).

(Source: Amended in R93-10 at — Ill. Reg. —, effective January 13, 1994)

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Section 811. Appendix A Financial Assurance Forms
Illustration A Trust Agreement

TRUST AGREEMENT

Trust Fund Number _____,
Trust Agreement, the "Agreement," entered into as of the
day of _____, by and between _____, a
_____, the "Grantor," and _____, the "Trustee."

Whereas, Section 21.1 of the Environmental Protection Act, "Act", prohibits any person from conducting any waste disposal operation unless such person has posted with the Illinois Environmental Protection Agency, "IEPA", a performance bond or other security for the purpose of insuring closure of the site and postclosure care or corrective action in accordance with the Act and Illinois Pollution Control Board, "PCB", rules.

Whereas, the IPCB has established certain regulations applicable to the Grantor, requiring that an operator of a waste disposal site provide assurance that funds will be available when needed for closure and/or postclosure care or corrective action of the site.

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the sites identified in this agreement.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Whereas, Trustee is an entity which has authority to act as a trustee and whose trust operations are regulated by the Illinois Commissioner of Banks & Trust Companies or who complies with the Corporate Fiduciary Act (Ill. Rev. Stat. 1989, ch. 17, par. 1551-1 et. seq. [205 ILCS 5/1]). (Line through any condition which does not apply.)

Now, Therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

- a) The term "Grantor" means the operator who enters into this Agreement and any successors or assigns of the operator.

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- b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Sites and Cost Estimates. This Agreement pertains to the sites and cost estimates identified on attached Schedule A (on Schedule A, list the name and address and initial cost estimate of each site for which financial assurance is demonstrated by this agreement).

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the IEPA. The Grantor and the Trustee intend that no other third party have access to the Fund except as provided in this agreement. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached to this agreement. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits on the Fund, less any payments or distributions made by the Trustee pursuant to this agreement. The Fund shall be held by the Trustee, in trust, as provided in this agreement. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor.

Section 4. Payment for Closure and Postclosure care or Corrective Action. The Trustee shall make payments from the Fund as the IEPA shall direct, in writing, to provide for the payment of the costs of closure and/or postclosure care or corrective action of the sites covered by this agreement. The Trustee shall reimburse the Grantor or other persons as specified by the IEPA from the Fund for closure and postclosure or corrective action expenditures in such amounts as the IEPA shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the IEPA specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trust Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling and

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managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- a) Securities or other obligations of the Grantor, or any other owner or operator of the site, or any of their affiliates as defined in Section 80a-2(a) of the Investment Company Act of 1940, as amended (15 U.S.C. 80a-2(a)) shall not be acquired or held, unless they are securities or other obligations of the Federal government or the State of Illinois;
- b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by the Federal Deposit Insurance Corporation.
- c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

- a) To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and
- b) To purchase shares in any investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et. seq.) including one which may be created, managed, underwritten or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this agreement or by law, the Trustee is expressly authorized and empowered:

- a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the

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validity or expedience of any such sale or other disposition;

- b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers granted in this agreement;
- c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund.
- d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by the Federal Deposit Insurance Corporation; and
- e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee, to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually furnish to the Grantor and to the IEPA a statement confirming the value of the Trust. The evaluation day shall be each year on the day of _____. Any securities in the Fund shall be valued at market value as of the evaluation day. The Trustee shall mail the evaluation statement to the Grantor and the IEPA within 30 days after the evaluation day. The failure of the Grantor to object in writing to the Trustee within 90 days

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after the statement has been furnished to the Grantor and the IEPA shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and the successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the IEPA and the present Trustee by certified mail ten days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests and instructions by the IEPA to the Trustee shall be in writing, signed by the IEPA Director or his designees, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests and instructions. The Trustee shall have the right to assume, in the absence of written notice to the

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contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or IEPA hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or IEPA, except as provided in this agreement.

Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor and the IEPA, by certified mail within ten days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee and the IEPA Director, or by the Trustee and the IEPA Director if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee and the IEPA Director, or by the Trustee and the IEPA, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the IEPA Director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed and enforced according to the laws of the State of Illinois.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

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In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written.

Attest: Signature of Grantor _____

Typed Name _____

Title _____

Seal

Attest: Signature of Trustee _____

Typed Name _____

Title _____

Seal

Section 811. Appendix A Financial Assurance Forms
Illustration C Forfeiture Bond

FORFEITURE BOND

Date bond executed: _____

Effective date: _____

Principal: _____

Type of organization: _____

State of incorporation: _____

Surety: _____

Sites: _____

Name _____

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Address _____

City _____

Amount guaranteed by this bond: \$ _____

Name _____

Address _____

City _____

Amount guaranteed by this bond: \$ _____

Please attach a separate page if more space is needed for all sites.

Total penal sum of bond: \$ _____

Surety's bond number: _____

The Principal and the Surety promise to pay the Illinois Environmental Protection Agency ("IEPA") the above penal sum unless the Principal provides closure and postclosure care or corrective action for each site in accordance with the closure and postclosure care or corrective action plans for that site. To the payment of this obligation the Principal and Surety jointly and severally bind themselves, their heirs, executors, administrators, successors and assigns.

Whereas the Principal is required, under Section 21(d) of the Environmental Protection Act (Ill. Rev. Stat. 1989¹, ch. 111¹, par. 1021(d)) [415 ILCS 5/21(d)] to have a permit to conduct a waste disposal operation;

Whereas the Principal is required, under Section 21.1 of the Environmental Protection Act to provide financial assurance for closure and postclosure care or corrective action; and

Whereas the Surety is licensed by the Illinois Department of Insurance;

Whereas the Principal and Surety agree that this bond shall be governed by the laws of the State of Illinois;

The Surety shall pay the penal sum to the IEPA if, during the term of the bond, the Principal fails to provide closure and postclosure care or corrective action for any site in accordance with the closure and postclosure care or corrective action plans

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for that site as guaranteed by this bond. The Principal fails to so provide when the Principal:

- a) Abandons the site;
- b) Is adjudicated bankrupt;
- c) Fails to initiate closure of the site or postclosure care or corrective action when ordered to do so by the Board or a court of competent jurisdiction; or
- d) Notifies the Agency that it has initiated closure, or initiates closure, but fails to close the site or provide postclosure care or corrective action in accordance with the closure and postclosure care or corrective action plans; or
- e) For corrective action, fails to implement corrective action at a municipal solid waste landfill unit in accordance with 35 Ill. Adm. Code 811.326.

The Surety shall pay the penal sum of the bond to the IEPA within 30 days after the IEPA mails notice to the Surety that the Principal has failed to so provide closure and postclosure care or corrective action. Payment shall be made by check or draft payable to the State of Illinois, Landfill Closure and Postclosure Fund.

The liability of the Surety shall not be discharged by any payment or succession of payments unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond. In no event shall the obligation of the Surety exceed the amount of the penal sum.

This bond shall expire on the _____ day of _____; provided, however, that if the Principal fails to provide substitute financial assurance prior to the expiration date, and the IEPA mails notice of such failure to the Surety within 30 days after such date, the term of this bond shall be automatically extended for one twelve-month period starting with the date of expiration of the bond.

The Principal may terminate this bond by sending written notice to the Surety; provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond from the IEPA.

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In Witness Whereof, the Principal and Surety have executed this Forfeiture Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below certify that they are authorized to execute this surety bond on behalf of the Principal and Surety.

Principal Corporate Surety
PRINCIPAL

Signature Name _____

Typed Name _____

Address _____

Title _____

State of Incorporation _____

Date _____

Corporate seal

CORPORATE SURETY

Signature _____

Typed Name _____

Title _____

Corporate seal _____ Corporate seal

Bond premium: \$ _____

Section 811. Appendix A Financial Assurance Forms
Illustration D Performance Bond

PERFORMANCE BOND

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Date bond executed: _____
 Effective date: _____
 Principal: _____
 Type of organization: _____
 State of incorporation: _____
 Surety: _____
 Sites: _____
 Name: _____
 Address: _____
 City: _____
 Amount guaranteed by this bond: \$ _____
 Name: _____
 Address: _____
 City: _____
 Amount guaranteed by this bond: \$ _____
 Please attach a separate page if more space is needed for all sites.
 Total penal sum of bond: \$ _____
 Surety's bond number: _____

The Principal and the Surety promise to pay the Illinois Environmental Protection Agency ("IEPA") the above penal sum unless the Principal or Surety provides closure and postclosure care or corrective action for each site in accordance with the closure and postclosure care or corrective action plans for that site. To the payment of this obligation the Principal and Surety jointly and severally bind themselves, their heirs, executors, administrators, successors and assigns.

Whereas the Principal is required, under Section 21(d) of the Environmental Protection Act (Ill. Rev. Stat. 1989¹, ch. 111¹,

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par. 1021(d) 1415 ILCS 5/21(d)(1) to have a permit to conduct a waste disposal operation;

Whereas the Principal is required, under Section 21.1 of the Environmental Protection Act, to provide financial assurance for closure and postclosure care or corrective action; and

Whereas the Surety is licensed by the Illinois Department of Insurance;

Whereas the Principal and Surety agree that this bond shall be governed by the laws of the State of Illinois;

The Surety shall pay the penal sum to the IEPA or provide closure and postclosure care or corrective action in accordance with the closure and postclosure care or corrective action plans for the site if, during the term of the bond, the Principal fails to provide closure and postclosure care or corrective action for any site in accordance with the closure and postclosure care or corrective action plans for that site as guaranteed by this bond. The Principal fails to so provide when the Principal:

- a) Abandons the site;
- b) Is adjudicated bankrupt;
- c) Fails to initiate closure of the site or postclosure care or corrective action when ordered to do so by the Board or a court of competent jurisdiction; ~~or~~
- d) Notifies the Agency that it has initiated closure, or initiates closure, but fails to close the site or provide postclosure care or corrective action in accordance with the closure and postclosure care or corrective action plans; or
- e) For corrective action, fails to implement corrective action at a municipal solid waste landfill unit in accordance with 35 Ill. Adm. Code 811.326.

The Surety shall pay the penal sum of the bond to the IEPA or notify the IEPA that it intends to provide closure and postclosure care or corrective action in accordance with the closure and postclosure care or corrective action plans for the site within 30 days after the IEPA mails notice to the Surety that the Principal has failed to so provide closure and postclosure care or corrective action. Payment shall be made by check or draft payable to the State of Illinois, Landfill Closure and Postclosure Fund.

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If the Surety notifies the Agency that it intends to provide closure and postclosure care or corrective action, then the Surety must initiate closure and postclosure care or corrective action within 60 days after the IEPA mailed notice to the Surety that the Principal failed to provide closure and postclosure care or corrective action. The Surety must complete closure and postclosure care or corrective action in accordance with the closure and postclosure care or corrective action plans, or pay the penal sum.

The liability of the Surety shall not be discharged by any payment or succession of payments unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond. In no event shall the obligation of the Surety exceed the amount of the penal sum.

This bond shall expire on the _____ day of _____, _____; provided, however, that if the Principal fails to provide substitute financial assurance prior to the expiration date, and the IEPA mails notice of such failure to the Surety within 30 days after such date, the term of this bond shall be automatically extended for one twelve-month period starting with the date of expiration of the bond.

The Principal may terminate this bond by sending written notice to the Surety; provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond from the IEPA.

In Witness Whereof, the Principal and Surety have executed this Forfeiture Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below certify that they are authorized to execute this surety bond on behalf of the Principal and Surety.

Principal-Corporate-Surety
PRINCIPAL

Signature Name _____

Typed Name _____

Address _____

Title _____

State of Incorporation _____

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Date _____

Corporate seal _____

CORPORATE SURETY

Signature _____

Typed Name _____

Title _____

Corporate seal _____ Corporate seal

Bond premium: \$ _____

Section 811. Appendix A Financial Assurance Forms
Illustration E Irrevocable Standby Letter of Credit

IRREVOCABLE STANDBY LETTER OF CREDIT

Director
Illinois Environmental Protection Agency
2200 Churchill Road
Springfield, Illinois 62706

Dear Sir or Madam:

We have authority to issue letters of credit. Our letter-of-credit operations are regulated by the Illinois Commissioner of Banks and Trusts or our deposits are insured by the Federal Deposit Insurance Corporation. (Omit language which does not apply)

We hereby establish our Irrevocable Standby Letter of Credit No. _____ in your favor, at the request and for the account of _____ up to the aggregate amount of _____ U. S. dollars (\$ _____), available upon presentation of _____

1. your sight draft, bearing reference to this letter of credit No. _____; and,

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2. your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the Environmental Protection Act (Ill. Rev. Stat. 1989¹, ch. 111^{1/2}, par. 1001 et. seq. [415 ILCS 5/1 et. seq.] and 35 Ill. Adm. Code 811.713(e)).

This letter of credit is effective as of _____; and shall expire on _____; but, such expiration date shall be automatically extended for one period of twelve months starting with the expiration date if the operator fails to substitute alternative financial assurance prior to the expiration of this letter of credit and you notify us of such failure within 30 days after the above expiration date.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the State of Illinois Landfill eClosure and pPostclosure or Corrective Action #Fund in accordance with your instructions.

This letter of credit is governed by the Uniform Commercial Code (Ill. Rev. Stat. 1989¹, ch. 26, pars. 1-101 et. seq. [810 ILCS 5/1-101 et. seq.]).

Signature _____
Typed Name _____
Title _____
Date _____
Name and address of issuing institution _____

This credit is subject to _____

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Section 811.Appendix B Section-by-Section Correlation Between the Requirements of the Federal MSWLF Regulations at 40 CFR 258 (1992) and the Requirements of Parts 810 through 814.

RCRA SUBTITLE D REGULATIONS	ILLINOIS LANDFILL REGULATIONS
I. SUBPART A: General	
1) Purpose, Scope, and Applicability (40 CFR 258.1)	1) NL: Sections 811.101, 811.301, 811.401, 811.501 and 811.700. EL: Section 814.101.
2) Definitions (40 CFR 258.2)	2) Section 810.103.
II. SUBPART B: Location Restrictions	
1) Airport safety (40 CFR 258.10)	1) NL: Section 811.302(e). EL: Section 814.302(c) and 814.402(c).
2) Floodplains. (40 CFR 258.11)	2) NL: Section 811.102(b). EL: Section 814.302 and 814.402.
3) Wetlands. (40 CFR 258.12)	3) NL: Sections 811.102(d), 811.102(e), and 811.103. EL: Section 814.302 and 814.402.
4) Fault areas. (40 CFR 258.13)	4-5) NL: Sections 811.304 and 811.305. EL: Section 814.302 and 814.402.
5) Seismic impact zones. (40 CFR 258.14)	
6) Unstable areas. (40 CFR 259.15)	6) NL: Sections 811.304 and 811.305. EL: Sections 811.302(c) and 811.402(c).
7) Closure of existing MSWLF units. (40 CFR 258.16)	7) EL: Sections 814.301 and 814.401.
III. SUBPART C: Operating Criteria	
1) Procedures for excluding the receipt of hazardous waste. (40 CFR 258.20)	1) NL: Section 811.323. EL: Sections 814.302 and 814.402.
2) Cover material requirements. (40 CFR 258.21)	2) NL: Section 811.106. EL: Sections 814.302 and 814.402.

1 - NL: New Landfill; 2 - EL: Existing Landfill and Lateral Expansions.

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R/CRA SUBTITLE D REGULATIONS		ILLINOIS LANDFILL REGULATIONS
III.	SUBPART C: Operating criteria (contd.)	
3)	Disease vector control. (40 CFR 258.22)	3) NL: Section 811.107(i). EL: Sections 814.302 and 814.402
4)	Explosive gas control. (40 CFR 258.23)	4) NL: Sections 811.310, 811.311, and 811.312. EL: Sections 814.302 and 814.402
5)	Air criteria. (40 CFR 258.24)	5) NL: Sections 811.107(b), 811.310, and 811.311. EL: Sections 814.302 and 814.402
6)	Access requirements. (40 CFR 258.25)	6) NL: Section 811.109. EL: Sections 814.302 and 814.402
7)	Run-on/run-off control system. (40 CFR 258.26)	7) NL: Section 811.103. EL: Sections 814.302 and 814.402
8)	Surface water requirements. (40 CFR 258.27)	8) same as above.
9)	Liquids restrictions. (40 CFR 258.28)	9) NL: Section 811.107(m). EL: Sections 814.302 and 814.402
10)	Recordkeeping requirements. (40 CFR 258.29)	10) NL: Sections 811.112, and Parts 812 and 813. EL: Sections 814.302 and 814.402
IV.	SUBPART D: Design criteria (40 CFR 258.40)	IV) NL: 811.303, 811.304, 811.305, 811.306, 811.307, 811.308, 811.309, 811.315, 811.316, 811.317, and 811.Subpart E. EL: Sections 814.302 and 814.402
V.	SUBPART E: Groundwater Monitoring and Corrective Action	
1)	Applicability.	1) NL: 35 Section 811.319(a)(1). EL: Sections 814.302 and 814.402
2)	Groundwater monitoring systems. (40 CFR 258.51)	2) NL: Sections 811.318 and 811.320(d). EL: Sections 814.302 and 814.402
3)	Groundwater sampling and analysis. (40 CFR 258.53)	3) NL: Section 811.318(e), 811.320(d), 811.320(e). EL: Sections 814.302 and 814.402

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R/CRA SUBTITLE D REGULATIONS		ILLINOIS LANDFILL REGULATIONS
4)	Detection monitoring program. (40 CFR 258.54)	4) NL: Section 811.319(a). EL: Sections 814.302 and 814.402
5)	Assessment monitoring program. (40 CFR 258.55)	5) NL: Section 811.319(b). EL: Sections 814.302 and 814.402
6)	Assessment of corrective measures. (40 CFR 258.56)	6) NL: Sections 811.319(d) and 811.324. EL: Sections 814.302 and 814.402
7)	Selection of remedy. (40 CFR 258.57)	7) NL: Sections 811.319(d) and 811.325. EL: Sections 814.302 and 814.402
8)	Implementation of the corrective action program. (40 CFR 258.58)	8) NL: Sections 811.319(d) and 811.325. EL: Sections 814.302 and 814.402
VI.	SUBPART F: Closure and Post-Closure Care	
1)	Closure criteria. (40 CFR 258.60)	1) NL: Sections 811.110, 811.315 and 811.322. EL: Sections 814.302 and 814.402
2)	Post-closure care requirements. (40 CFR 258.61)	2) NL: Section 811.111. EL: Sections 814.302 and 814.402
VII.	SUBPART G: Financial Assurance Criteria	
1)	Applicability and effective date. (40 CFR 258.70)	1) NL: Section 811.700. EL: Sections 814.302 and 814.402
2)	Financial assurance for closure. (40 CFR 258.71)	2, 3 and 4)
3)	Financial assurance for post-closure. (40 CFR 258.72)	NL: Sections 811.701 through 811.705. EL: Sections 814.302 and 814.402
4)	Financial assurance for corrective action. (40 CFR 258.73)	
5)	Allowable mechanisms. (40 CFR 258.73)	5) NL: Section 811.706 through 811.715. EL: Sections 814.302 and 814.402

DEPARTMENT OF PUBLIC HEALTH
NOTICE OF ADOPTED AMENDMENTS

- 1) The Heading of the Part:
AIDS Drug Reimbursement Program
- 2) Code Citation:
77 Ill. Adm. Code 692
- 3) Section Numbers:
692.10
692.Appendix A
692.Appendix B
Adopted Action:
Amendment
Amendment
Amendment
- 4) Statutory Authority:
Implementing Title II of the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (42 USC 300ff, as amended by Public Law 101-381, effective August 18, 1990) and authorized by Section 55.41 of the Civil Administrative Code of Illinois (Ill. Rev. Stat., 1991, ch. 127, par. 55-41) [20 ILCS 2310/55.41].
- 5) Effective Date of Amendments:
January 20, 1994
- 6) Does this Rulemaking Contain an Automatic Repeal Date?
No
- 7) Does this Rulemaking Contain any Incorporation by Reference?
No
- 8) Date Filed in Agency's Principal Office:
January 20, 1994
- 9) Date Notice of Proposed Repealer was Published in the Illinois Register:
17 Ill. Reg. 12590 - August 6, 1993
- 10) Has the Joint Committee on Administrative Rules Issued a Statement of Objection to this Rulemaking:

DEPARTMENT OF PUBLIC HEALTH
NOTICE OF ADOPTED AMENDMENTS

- No
- If Yes, Date Agency Response Submitted for Approval to ICAR:
- Date Statement of Objection was Published in the Illinois Register:
- 11) Difference Between Proposal and Final Version:
Various technical and editorial changes recommended by the Joint Committee on Administrative Rules and the Administrative Code Division have been made.
- 12) Have all the changes agreed upon by the Agency and the Joint Committee been made as indicated in the agreement letter issued by the Joint Committee?
Only technical and editorial changes were requested by the Joint Committee on Administrative Rules. All such changes were made.
- 13) Will the Amendments Replace an Emergency Rule Currently in Effect?
No
- 14) Are there any other Amendments Pending on this Part?
No
- 15) Summary and Purpose of Rulemaking:
This rulemaking increases the eligibility level for the AIDS Drug Reimbursement Program and adds drugs to be covered under the Program.
- 16) Information and Questions Regarding these Adopted Amendments Shall be Directed to:
Ms. Gail M. DeVito, Division of Governmental Affairs, Illinois Department of Public Health, 535 West Jefferson, Fifth Floor, Springfield, Illinois 62761 (217)782-6187.

The full text of the Adopted Amendments begins on the next page:

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER k: COMMUNICABLE DISEASE CONTROL AND IMMUNIZATIONS

PART 692
AIDS DRUG REIMBURSEMENT PROGRAM

Section

692.10

Drugs to Prolong the Lives of Non-Medicare Persons with Acquired Immunodeficiency Syndrome (AIDS) or Human Immunodeficiency Virus (HIV) Infection

692. Appendix A

1993 Poverty Income Guidelines

692. Appendix B

CARE Act Sliding Fee Scale

AUTHORITY: Implementing Title II of the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (42 USC 300ff), as amended by Public Law 101-381, effective August 18, 1990) and authorized by Section 55.41 of the Civil Administrative Code of Illinois (Ill. Rev. Stat., 1991, ch. 127, par. 55-41) [20 ILCS 2310/55.41].

SOURCE: Emergency rule adopted at 15 Ill. Reg. 14699, effective September 30, 1991, for a maximum of 150 days; adopted at 16 Ill. Reg. 4052, effective February 27, 1992; emergency amendment at 17 Ill. Reg. 12913, effective July 23, 1993, for a maximum of 150 days; emergency expired December 20, 1993; amended at 18 Ill. Reg. _____, effective January 20, 1994.

Section 692.10

Drugs to Prolong the Lives of Non-Medicare Persons with Acquired Immunodeficiency Syndrome (AIDS) or Human Immunodeficiency Virus (HIV) Infection

Drugs provided under this Section are paid for on behalf of low income individuals with Acquired Immunodeficiency Syndrome (AIDS) or persons with the Human Immunodeficiency Virus (HIV).

- a) To qualify for services under this Section, a person must be enrolled in the AIDS Drug Reimbursement Program as of September 30, 1991, or

- 1) make application with the Illinois Department of Public Health (Department);
- 2) be diagnosed as having AIDS or HIV;
- 3) qualify financially with anticipated net monthly income at or below 400% of the Federal Poverty Level for the size of the household (See Appendix A);
- 4) not be eligible for 100% insurance coverage for drugs through another third party payor;

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- 5) not be eligible for the Medical Assistance Program (Medicaid) on the date drugs are obtained (individuals with financial/medical assistance applications pending or individuals in spenddown unmet status may participate); and

- 6) not be eligible for payment of medical services from any other governmental entity.

- b) The drugs that are covered under the AIDS Drug Reimbursement Program are zidovudine, ~~azidothymidine (AZT) or Retrovir~~, didoxynosine (DDI), zalcitabine (ddC), aerosolized pentamidine, sulfamethoxazole/trimethoprim, ~~and~~ alpha interferon, zovirax (acyclovir), diducan (flucanazole), ketoconazole, and dapsone.

- c) To be eligible for services, all prescriptions must be filled by the Department's sole pharmacy contractor.

- d) The sole pharmacy contractor may charge a fee for services. If a fee for services is charged, it must be in accordance with and conform to the sliding fee structure specified in Title II of the CARE Act (See Appendix B).

- e) The Department will make a disposition and issue a written decision on an applicant filed pursuant to this Section within thirty (30) days from the date the Department receives the application. An individual may appeal the Department's denial of his/her application. Such appeal shall be in accordance with the Department's rules of practice and procedure in administrative hearings (77 Ill. Adm. Code 100).

(Source: Amended at 18 Ill. Reg. _____, effective January 20, 1994.)

Section 692. Appendix A 1993 1994 Poverty Income Guidelines

1993 1994 Poverty Income Guidelines

Size of Family Unit	Poverty Guideline
1	\$6,970 6,620
2	9,430 8,880
3	11,890 11,140
4	14,350 13,400
5	16,810 15,660
6	19,270 17,920
7	21,730 20,180
8	24,190 22,440

For family units with more than 8 members, add \$2,460 2,260 for each additional member.

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(Source: Amended at 18 Ill. Reg. _____, effective January 20, 1994.)

Section 692. Appendix B

CARE Act Sliding Fee Scale

CARE Act Sliding Fee Scale

Individual/Family Annual Gross Income	Total Allowable Annual Charges
Equal to or below the official poverty line	No charges permitted
101 to 200 percent of the official poverty line	5 percent or less of gross income level
201 to 300 percent of the official poverty line	7 percent or less of gross income level
more than 300 percent of the official poverty line	10 percent or less of gross income level

(Source: Amended at 18 Ill. Reg. _____, effective January 20, 1994.)

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1) Heading of the Part:

Intermediate Care for the Developmentally Disabled Facilities Code

2) Code Citation:

77 Ill. Adm. Code 350

3) Section Numbers:

350.110
350.120
350.140
350.150
350.160
350.282
350.2660

Adopted Action:

Amendments
Amendments
Amendments
Amendments
Amendments
Amendments

4) Statutory Authority:

Nursing Home Care Act
Ill. Rev. Stat. 1991, ch. 111 1/2, pars. 4151-101 et seq.
[210 ILCS 45]

5) Effective Date of Amendments:

January 14, 1994

6) Does this Rulemaking Contain an Automatic Repeal Date? Yes _____ No X

If "yes," please specify date: _____

7) Does this Rulemaking Contain Any Incorporations By Reference? Yes _____ No X8) Date Filed in Agency's Principal Office:

January 14, 1994

9) Date Notice(s) of Proposal was Published in Illinois Register:

July 30, 1993 - 17 Ill. Reg. 12104

10) Has the Joint Committee on Administrative Rules issued a Statement of Objection to these Rules? Yes _____ No X

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If "yes," please complete the following:

- A) Statement of Objection: _____ Ill. Reg. _____
- B) Agency Response: _____ Ill. Reg. _____
- C) Date Agency Response Submitted for Approval to the Joint Committee: _____

11) Difference Between Proposal and Final Version:

The following changes were made in response to comments received during the first notice or public comment period:

1. The Table of Contents and Authority Note were updated to reflect recently adopted amendments.
2. In the Source Note, the entry for March 31, 1993 was deleted and entries were added for May 6, 1993, September 3, 1993, October 3, 1993, and January 1, 1994.
3. Subpart headings were added in the text.
4. Statutory citations were corrected to cite both Ill. Rev. Stat. and ILCS.
5. In Section 350.110(a) "~~These minimum standards apply~~" was added in line 1. Statutory citations were corrected to show the Ill. Rev. Stat. updated to 1991 and to delete the ILCS year and section number.
6. In Section 350.120(e), the heading and subsection labels were underlined.
7. In Section 350.140 the date and section number for ILCS were deleted.
8. In Section 350.160, the citation to Section 3-115 of the Act was added.

The following changes were made in response to comments and suggestions of the Joint Committee on Administrative Rules:

1. In Section 350.110(g), the changes from "OR" to "OF" were corrected to "OF" to reflect existing language.
2. In Section 350.120(a), the words "Application forms" were changed to "The application form" in the last sentence to reflect previously adopted language.

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3. In Section 350.120(a), the word "plan" was changed to "plant" in the last sentence to reflect previously adopted language.
4. In Section 350.120(g)(2), "less than" was added before "eighteen," and in subsection (g)(3), "Nineteen (19)" was changed to "Eighteen (18)."
5. In Section 350.140(a)(3) a citation to "(Ill. Rev. Stat. 1991, ch. 111 1/2, pars. 4151-101 et seq.)" was added and shown as stricken through.

In addition, various typographical, grammatical and form changes were made in response to the comments from the Administrative Code Division and the Joint Committee on Administrative Rules.

12) Have all the changes agreed upon by the Agency and the Joint Committee been made as indicated in the agreement letter issued by the Joint Committee?

The Department has made all the changes to which it agreed with the Joint Committee.

13) Will the Rules Replace an Emergency Rule Currently in Effect?

Yes _____ No X _____

14) Are there any other Amendments Pending on this Part?

Yes _____ No X _____

If Yes:

<u>Section Numbers</u>	<u>Proposed Action</u>	<u>Ill. Reg. Citation</u>
_____	_____	_____

15) Summary and Purpose of Rules:

The rules in Part 350 govern the licensure of intermediate care facilities for the developmentally disabled. These amendments include changes necessitated by recently enacted legislation.

Section 350.110 - The rules are being amended in response to a Recommendation issued by JCAR at its June 16, 1992 meeting. The Recommendation requests that the Department amend Section 350.110 to include its policy regarding licensure for more than one level of care, which was inadvertently omitted from a previous rulemaking.

Section 350.120 - The rules are being amended in response to P.A. 87-1102 (H.B. 3796, effective January 1, 1993), which amended Sections 3-103, 3-110, 3-212, 3-215, and 3-805 of the Nursing

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NOTICE OF ADOPTED AMENDMENTS

Home Care Act to provide for the issuance of two-year licenses. The two-year license includes a \$400 application fee and will be issued to facilities that meet the criteria set forth in Section 3-110 of the Act. The criteria are based on the facility's performance record for the past 24 months. The amendments to Section 350.120 include the addition of new statutory language and provisions for prorating fees for facilities that receive two-year licenses.

Section 350.140 - This Section is also being amended in response to P.A. 87-1102 to state that the licensee shall qualify for issuance of a two-year license if the licensee has met the criteria contained in Section 3-110(b) of the Act for the last twenty-four consecutive months.

Section 350.150 - This Section is also being amended to reference the criteria for two-year licensure set forth in Section 3-110(b) of the Act.

Section 350.160 - Also in response to P.A. 87-1102, this Section is being amended to reflect a change in statutory language that deleted reference to a one-year renewal period.

Section 350.282 - This Section is being amended in response to P.A. 87-1056 (S.B. 1965, effective September 11, 1992), which amended the Nursing Home Care Act to permit the Department to assess a fine of not less than \$10,000 when death, serious mental or physical harm, permanent disability, or disfigurement results from a situation in which an "A" violation is issued. The amendments include correction of existing statutory language; addition of new statutory language concerning the assessment of fines; and reference to the criteria set forth in Section 350.286(a) of the rules, which are used by the Department to determine the amount of the fine.

Section 350.2660 - The amendment to this Section deletes an incorrect cross-reference in subsection (g)(3). The rule currently references Section 350.2730, which concerns plumbing systems and does not add any specific information about sinks or sanitizers. In addition, some grammatical and format changes have been made in Section 350.2660.

16) Information and Questions regarding this Adopted Rulemaking shall be directed to:

Ms. Gail DeVito, Division of Governmental Affairs, Department of Public Health, 535 West Jefferson, Fifth Floor, Springfield, Illinois 62761, 217/782-6187.

The full text of the Adopted Amendments begins on the next page:

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENT(S)

TITLE 77: PUBLIC HEALTH

CHAPTER I: DEPARTMENT OF PUBLIC HEALTH

SUBCHAPTER C: LONG-TERM CARE FACILITIES

PART 350

INTERMEDIATE CARE FOR THE DEVELOPMENTALLY DISABLED FACILITIES CODE

SUBPART A: GENERAL PROVISIONS

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350.140	Issuance of an Initial License for a New Facility
350.150	Issuance of an Initial License Due to a Change of Ownership
350.160	Issuance of a Renewal License
350.165	Criteria for Adverse Licensure Actions
350.170	Denial of Initial License
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350.180	Revocation of License
350.190	Experimental Program Conflicting with Requirements
350.200	Inspections, Surveys, Evaluations and Consultation
350.210	Filing an Annual Attested Financial Statement
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350.230	Information to Be Made Available to the Public By the Licensee
350.240	Municipal Licensing
350.250	Ownership Disclosure
350.260	Issuance of Conditional Licenses
350.270	Monitor and Receivership
350.271	Presentation of Findings
350.272	Determination to Issue a Notice of Violation or Administrative Warning
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350.276	Notice of Violation
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350.278	Plans of Correction
350.280	Reports of Correction
350.282	Conditions for Assessment of Penalties
350.284	Calculation of Penalties
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350.290	Quarterly List of Violators
350.300	Alcoholism Treatment Programs in Long-Term Care Facilities
350.310	Department May Survey Facilities Formerly Licensed
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SUBPART B: ADMINISTRATION

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Section 350.510	Administrator
SUBPART C: POLICIES	
Section 350.610	Management Policies
350.620	Resident Care Policies
350.630	Admission and Discharge Policies
350.640	Contract Between Resident and Facility
350.650	Residents' Advisory Council
350.660	General Policies
350.670	Personnel Policies
350.675	Initial Health Evaluation for Employees
350.680	Developmental Disabilities Aides
350.685	Student Interns
350.690	Disaster Preparedness
350.700	Serious Incidents and Accidents

SUBPART D: PERSONNEL

Section 350.810	Personnel
350.820	Consultation Services
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SUBPART E: RESIDENT LIVING SERVICES	
Section 350.1010	Service Programs
350.1020	Psychological Services
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SUBPART F: HEALTH SERVICES

Section 350.1210	Health Services
350.1220	Physician Services
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SUBPART G: MEDICATIONS

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Section 350.1410	Medication Policies and Procedures
350.1420	Conformance with Physician's Orders
350.1430	Administration of Medication
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SUBPART H: RESIDENT AND FACILITY RECORDS	
Section 350.1610	Resident Record Requirements
350.1620	Content of Medical Records
350.1630	Confidentiality of Resident's Records
350.1640	Records Pertaining to Residents' Property
350.1650	Retention and Transfer of Resident Records
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350.1690	Other Facility Record Requirements

SUBPART I: FOOD SERVICE

Section 350.1810	Director of Food Services
350.1820	Dietary Staff in Addition to Director of Food Services
350.1830	Hygiene of Dietary Staff
350.1840	Diet Orders
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350.1860	Therapeutic Diets
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350.1880	Menu Planning
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350.1900	Food Handling Sanitation
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SUBPART J: MAINTENANCE, HOUSEKEEPING AND LAUNDRY

Section 350.2010	Maintenance
350.2020	Housekeeping
350.2030	Laundry Services

SUBPART K: FURNISHINGS, EQUIPMENT, AND SUPPLIES

Section 350.2210	Furnishings
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SUBPART L: WATER SUPPLY AND SEWAGE DISPOSAL	

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350.2420 Water Supply
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SUBPART M: CONSTRUCTION STANDARDS FOR NEW INTERMEDIATE CARE FACILITIES FOR THE DEVELOPMENTALLY DISABLED

Section

350.2610 Applicability of These Standards
350.2620 Codes and Standards
350.2630 Preparation of Drawings and Specifications
350.2640 Site

350.2650 Administration and Public Areas

350.2660 Nursing Unit

350.2670 Dining, Living, Activities Rooms

350.2680 Therapy and Personal Care

350.2690 Service Departments

350.2700 General Building Requirements

350.2710 Structural

350.2720 Mechanical Systems

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SUBPART N: CONSTRUCTION STANDARDS FOR EXISTING INTERMEDIATE

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Section

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350.2930 Preparation of Drawings and Specifications

350.2940 Site

350.2950 Administration and Public Areas

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350.2970 Living, Dining, Activities Rooms

350.2980 Treatment and Personal Care

350.2990 Service Departments

350.3000 General Building Requirements

350.3010 Structural

350.3020 Mechanical Systems

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350.3040 Electrical Requirements

SUBPART O: RESIDENT'S RIGHTS

Section

350.3210 General

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350.3330 Facility Implementation

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Section

350.3710 Applicability of Other Provisions of this Part

350.3720 Administration

350.3730 Admission and Discharge Policies

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350.3750 Consultation Services and Nursing Services

350.3760 Medication Policies

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350.3820 Bath and Toilet Rooms

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350.3880 General Building Requirements

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350.3900 Special Care Room

350.3910 Exit Facilities and Subdivision of Floor Areas

350.3920 Stairways, Vertical Openings and Doorways

350.3930 Hazardous Areas and Combustible Storage

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350.3950 Heating, Cooling, and Ventilating Systems

350.3960 Plumbing Systems

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350.3980 Fire Alarm and Detection System

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350.4000 Fire Protection

350.4010 Construction Types

350.4020 Equivalencies

350.4030 New Construction Requirements

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SUBPART Q: DAY CARE PROGRAMS

Section

350.4210 Day Care in Long-Term Care Facilities

APPENDIX A	Classification of Distinct Part of a Facility for Different Levels of Service (Repealed)
APPENDIX B	Federal Requirements Regarding Residents' Rights
APPENDIX C	Seismic Zone Map
APPENDIX D	Forms for Day Care in Long-Term Care Facilities
TABLE A	Sound Transmission Limitations in New Intermediate Care Facilities for the Developmentally Disabled
TABLE B	Pressure Relationships and Ventilation Rate of Certain Areas for the New Intermediate Care Facilities for the Developmentally Disabled
TABLE C	Construction Types and Sprinkler Requirements for Existing Intermediate Care Facilities for the Developmentally Disabled
TABLE D	Food Service Sanitation Rules and Regulations, 77 Ill. Adm. Code 750, 1983 Applicable for New Intermediate Care Facilities for the Developmentally Disabled at Sixteen (16) Beds or Less
TABLE E	Construction Types and Sprinkler Requirements for New Intermediate Care Facilities for the Developmentally Disabled of Sixteen (16) Beds or Less
TABLE F	Disaster Preparedness Parameters - Relative Humidity and Temperature.

AUTHORITY: Implementing and authorized by the Nursing Home Care Act (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 4151-101 et seq.) [210 ILCS 45].

SOURCE: Emergency rules adopted at 4 Ill. Reg. 10, p. 495, effective March 1, 1980, for a maximum of 150 days; amended at 4 Ill. Reg. 30, p. 1, effective July 28, 1980; amended at 5 Ill. Reg. 1657, effective February 4, 1981; amended at 6 Ill. Reg. 5981, effective May 3, 1982; amended at 6 Ill. Reg. 6433, effective May 14, 1982; amended at 6 Ill. Reg. 8198, effective June 29, 1982; amended at 6 Ill. Reg. 14544, effective November 8, 1982; amended at 6 Ill. Reg. 14675, effective November 15, 1982; amended at 6 Ill. Reg. 15536, effective December 15, 1982; amended at 7 Ill. Reg. 278, effective December 22, 1982; amended at 7 Ill. Reg. 1919 and 1945, effective January 28, 1983; amended at 7 Ill. Reg. 7963, effective July 1, 1983; amended at 7 Ill. Reg. 15817, effective November 15, 1983; amended at 7 Ill. Reg. 16984, effective December 14, 1983; amended at 8 Ill. Reg. 15574 and 15578 and 15581, effective August 15, 1984; amended at 8 Ill. Reg. 15935, effective August 17, 1984; amended at 8 Ill. Reg. 16980, effective September 5, 1984; codified at 8 Ill. Reg. 19806; amended at 8 Ill. Reg. 24214, effective November 29, 1984; amended at 8 Ill. Reg. 24680, effective December 7, 1984; amended at 9 Ill. Reg. 142, effective December 26, 1984; amended at 9 Ill. Reg. 331, effective December 28, 1984; amended at 9 Ill. Reg. 2964, effective February 25, 1985; amended at 9 Ill. Reg. 10876, effective July 1, 1985; amended at 11 Ill. Reg. 14795, effective October 1, 1987; amended at 11 Ill. Reg. 16830, effective October 1, 1987;

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amended at 12 Ill. Reg. 979, effective December 24, 1987; amended at 12 Ill. Reg. 16838, effective October 1, 1988; emergency amendment at 12 Ill. Reg. 18705, effective October 24, 1988, for a maximum of 150 days; emergency expired March 23, 1989; amended at 13 Ill. Reg. 6040, effective April 17, 1989; amended at 13 Ill. Reg. 19451, effective December 1, 1989; amended at 14 Ill. Reg. 14876, effective October 1, 1990; amended at 15 Ill. Reg. 466, effective January 1, 1991; amended at 16 Ill. Reg. 594, effective January 1, 1992; amended at 16 Ill. Reg. 13910, effective September 1, 1992; amended at 17 Ill. Reg. 2351, effective February 10, 1993; emergency amendment at 17 Ill. Reg. 2373, effective February 3, 1993, for a maximum of 150 days; emergency expired on July 3, 1993; emergency amendment at 17 Ill. Reg. 7948, effective May 6, 1993, for a maximum of 150 days; emergency expired on October 3, 1993; emergency amendment at 17 Ill. Reg. 9105, effective June 7, 1993, for a maximum of 150 days; amended at 17 Ill. Reg. 15056, effective September 3, 1993; amended at 17 Ill. Reg. 16153, effective January 1, 1994; amended at 17 Ill. Reg. 19210, effective October 26, 1993; amended at 17 Ill. Reg. 19517, effective November 4, 1993; amended at 17 Ill. Reg. 21017, effective November 20, 1993; amended at 18 Ill. Reg. _____, effective January 14, 1994.

SUBPART A: GENERAL PROVISIONS

Section 350.110 General Requirements

- a) This Part applies ~~These minimum standards~~ to the operator/licensee of facilities, or distinct parts thereof, that are to be licensed and classified to provide intermediate care for persons with developmental disabilities. Any license issued and in effect prior to March 1, 1980, pursuant to the Nursing Homes, Sheltered Care Homes, and Homes for the Aged Act (the Act) (Ill. Rev. Stat. 1977, ch. 111 1/2, par. 35.16 et seq.) shall remain valid and subject to the terms and conditions of the Nursing Home Care Act (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 4151-101 et seq.) [210 ILCS 45] and all regulations promulgated thereunder until the expiration date shown on the face of such license.
- b) The license issued to each operator/licensee shall designate the licensee's name, facility name, address, the classification by level of service authorized for that facility, the number of beds authorized for each level, the date the license was issued and the expiration date. Such licenses shall be issued for a period of ~~not less than six months nor more than 18 months~~. The Department will set the period of the license based on the license expiration dates of the facilities in the geographical area surrounding the facility ~~in order to distribute the expiration dates as evenly as possible throughout the calendar year.~~ (Section 3-110 of the Act)
- c) An applicant may request that the license issued by the Department of Public Health (the Department) have distinct parts classified according to levels of services. The distinct part must satisfactorily meet the applicable physical plant standards based on a level of

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service classification sought for that distinct part. If necessary to protect the health, welfare and safety of residents in a distinct part requiring higher standards, the Department shall require compliance with whatever additional physical plant standards are necessary in any distinct part, to achieve this protection as required by the highest level of care being licensed. Administrative, supervisory, and other personnel may be shared by the entire facility, if so doing does not adversely affect meeting the total needs of the residents of the facility.

- d) The operator may not admit residents in excess of the licensed capacity of the facility. (Section 2-209 of the Act) (B)
- e) An intermediate care facility licensed and classified under the Act shall not use in its title or description "Hospital", "Sanitarium", "Sanatorium", "Rehabilitation Center", "Skilled Nursing Facility", or any other word or description in its title or advertisements which indicates that a type of service is provided by the facility which the facility is not licensed to provide or, in fact, does not provide.
- f) Any person constructing or modifying a long-term care facility or portion thereof without obtaining the a required permit from the Health-Facilities-Planning-Board from the Health Facilities Planning Board shall not be eligible to apply for licensure for that facility or portion thereof (Section 13.1 of the Illinois Health Facilities Planning Act (Ill. Rev. Stat. 1989 1991, ch. 111 1/2, par. 1163.1) [20 ILCS 3960]).

- g) The licensee shall give 90 days notice prior to voluntarily closing a facility or closing any part of a facility, or prior to closing any part of a facility if closing such part will require the transfer or discharge of more than ten percent of the residents. Such notice shall be given to the Department, to any residents who must be transferred or discharged, to the resident's representative, and to a member of the resident's family, where practicable. Notice shall state the proposed date of closing and the reason for closing. The licensee shall offer to assist the resident in securing an alternative placement and shall advise the resident on available alternatives. Where the resident is unable to choose an alternate placement and is not under guardianship, the Department shall be notified of the need for relocation assistance. The facility shall comply with all applicable laws and regulations until the date of closing, including those related to transfer or discharge of residents. The Department may place a relocation team in the facility as provided under the Act. (Section 3-423 of the Act) (A, B)

- h) Licensure for more than one level of care.
- 1) A facility may be licensed for more than one level of care. The licensee must designate the level of care that will be provided in each bedroom. Bedrooms of like licensed level of care must be contiguous to each other within each "nursing unit" as defined in Section 350.330. Each nursing unit may have up to two levels of care and must meet the construction standards for the highest licensed level of care in the nursing unit.

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- 2) If a licensee wishes to designate a portion of its licensed beds as Long-Term Care for Under Age 22, the licensed beds must be located in a distinct part (as defined in Section 350.330) of the facility.

(Source: Amended at 18 Ill. Reg. _____, effective January 14, 1994)

Section 350.120 Application for License

- a) Any person acting individually or jointly with other persons who proposes to build, own, establish, or operate an intermediate care facility, or skilled nursing facility shall submit application information on forms provided by the Department. The Department shall be furnished a written description of the proposed program to be provided, and other such information as it may require in order to determine the appropriate level of care for which the facility should be licensed. The application form and other required information shall be submitted and approved prior to surveys of the physical plant or review of building plans and specifications.
- b) An application for a new facility shall be accompanied by a permit as required by the Illinois Health Facilities Planning Act (Ill. Rev. Stat. 1989 1991, ch. 111 1/2, par. 1151 et seq.) [20 ILCS 3960].
- c) Application for a license to establish or operate an intermediate care facility for persons with developmental disabilities shall be made in writing and submitted, with other such information as the Department may require, on forms provided by the Department. (Section 3-103(l) of the Act)
- d) All applications, except those of homes for the aged, shall be accompanied by an application fee of \$80-dollars \$200 for an annual license and \$400 for a 2 year license. The application shall be under oath and the submission of false or misleading information shall be a Class A misdemeanor. The application shall contain the following information:
- 1) The name and address of the applicant if an individual, and if a firm, partnership, or association, of every member thereof, and in the case of a corporation, the name and address thereof and of its officers and its registered agent, and in the case of a unit of local government, the name and address of its chief executive officer;
 - 2) The name and location of the facility for which a license is sought;
 - 3) The name of the person or persons under whose management or supervision the facility will be conducted;
 - 4) The number and type of residents for which maintenance, personal care, or nursing is to be provided; and
 - 5) Such information relating to the number, experience, and training of the employees of the facility, any management agreements for the operation of the facility, and of the moral character of the

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applicant and employees as the Department may deem necessary.
(Section 3-103(2) of the Act)

- e) Ownership Change or Discontinuation
1) The license is not transferable. It is issued to a specific licensee and for a specific location. The license and the valid current renewal certificate immediately become void and shall be returned to the Department when the facility is sold, or leased; or when operation is discontinued; or when operation is moved to a new location; or when the licensee (if an individual) dies; or when the licensee (if a corporation or partnership) dissolves or terminates; or when the licensee (whatever the entity) ceases to be.
- 2) A license issued to a corporation shall become null, void and of no further effect upon the dissolution of the corporation. The license shall not be revived if the corporation is subsequently reinstated. A new license must be obtained in such cases.
- f) Each initial application shall be accompanied by a financial statement setting forth the financial condition of the applicant and by a statement from the unit of local government having zoning jurisdiction over the facility's location stating that the location of the facility is not in violation of a zoning ordinance. An initial application for a new facility shall be accompanied by a permit as required by the Illinois Health Facilities Planning Act. After the application is approved, the applicant shall advise the Department every six months of any changes in the information originally provided in the application. (Section 3-103(3) of the Act)
- g) The Department may issue licenses or renewals for periods of not less than six (6) months nor more than eighteen (18) months for facilities with annual licenses and not less than 18 months nor more than 30 months for facilities with 2-year licenses in order for the Department to distribute the expiration dates of all such licenses throughout the calendar year. The fees for these such licenses are shall be pro-rated on the basis of the portion of the year for which they are issued. (Section 3-110 of the Act) The pro-rated fee will be as follows:
- | | |
|---|-----------|
| 1) Six (6) months to less than twelve (12) months -- | \$150.00; |
| 2) Twelve (12) months to less than eighteen (18) months -- | \$200.00; |
| 3) Eighteen (18) months to less than twenty-four (24) months -- | \$350.00; |
| 4) Twenty-four (24) months to thirty (30) months -- | \$400.00. |
- (Source: Amended at 18 Ill. Reg. _____, effective January 14, 1994)
- Section 350.140 Issuance of an Initial License for a New Facility**
- a) Upon receipt and review of an application for a license and inspection of the applicant facility, the Director shall issue a probationary license if he finds:

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- 1) The applicant is a person responsible and suitable to operate or to direct or participate in the operation of a facility by virtue of financial capacity, appropriate business or professional experience, a record of compliance with lawful orders of the Department and lack of revocation of a license during the previous five years;
- 2) The facility is under the supervision of an administrator who is licensed under the Nursing Home Administrators Licensing and Disciplinary Act (Ill. Rev. Stat. 1991, ch. 111, pars. 3651 et seq.) [225 ILCS 70]; and
- 3) ~~The facility is in substantial compliance with the Act (Ill. Rev. Stat. 1991, ch. 111, pars. 451-451-101 et seq.) and this Part. (Section 3-109 of the Act)~~
- b) The Department will issue a probationary license for 120 days from the date of issuance.
- c) Within 30 days prior to the termination of a probationary license, the Department shall fully and completely inspect the facility and, if the facility meets the applicable requirements for licensure, shall issue a license under Section 3-109 of the Act. (Section 3-116 of the Act) If the facility is not in compliance and satisfactory progress toward compliance is not being made, the Department will allow the probationary license to expire.
- d) If the Department finds that the facility does not meet the requirements for licensure but has made substantial progress toward meeting those requirements, the license may be renewed once for a period not to exceed 120 days from the expiration date of the initial probationary license. (Section 3-116 of the Act) Under no condition may more than two successive probationary licenses be issued.
- e) ~~Prior to actual receipt by the operator of the license certificate, the operator may begin operation upon receipt of approval by the Department. The licensee shall qualify for issuance of a two-year license if the licensee has met the criteria contained in Section 3-110(b) of the Act for the last twenty-four consecutive months.~~

(Source: Amended at 18 Ill. Reg. _____, effective January 14, 1994)

Section 350.150 Issuance of an Initial License Due to a Change of Ownership

- a) Upon receipt and review of an application for a license the Director shall issue a probationary license if he finds:
- 1) The applicant is a person responsible and suitable to operate or to direct or to participate in the operation of a facility by virtue of financial capacity, appropriate business or professional experience, a record of compliance with lawful orders of the Department and lack of revocation of a license during the previous five years;
- 2) The facility is under the supervision of an administrator who is licensed under the Nursing Home Administrators Licensing and

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- A) An amount not less than \$500 as determined by the Director or is designee considering the factors outlined in Section 350.286(a), or
- B) The total of the following:
- i) \$3 per resident in the facility, plus
 - ii) \$15 per resident for each day of the violation, commencing on the day date ~~on which~~ the a notice of violation is served under Section 3-301 of the Act and ending on the date the violation is corrected ~~received by the facility and ending on the day the necessary corrective action is completed.~~ (Section 3-305(2) of the Act)
- 2) Upon acceptance of a plan of correction by the Department, assessment of the penalty shall be suspended by the Department. No additional penalty shall be imposed for days during which the plan of correction is in effect.
- d) When a facility fails to correct a level B violation within the time period specified in the plan of correction approved by the Department.
- 1) The facility shall be cited for a repeat violation.
 - 2) The penalty to be assessed shall be computed in accordance with subsection (c)(1) of this Section. Days during which the plan of correction was in effect shall be included in the calculation of the penalty.
 - 3) The facility shall also be issued a conditional license for a period of at least six months as provided in Section 350.260.
 - e) When a notice of violation is issued for a violation of Article II of the Act with regard to the rights of a particular resident of the facility, the Department shall order the facility to reimburse the residents for any injuries incurred or if the amount of the injuries is less than \$100, the Department shall order the facility to pay \$100 to the resident. (Section 3-305(7) of the Act)

(Source: Amended at 18 Ill. Reg. _____, effective January 14, 1994.)

SUBPART M: CONSTRUCTION STANDARDS FOR NEW INTERMEDIATE CARE FACILITIES FOR THE DEVELOPMENTALLY DISABLED

Section 350.2660 Nursing Unit

- a) The number of resident beds in a nursing unit shall not exceed 75 beds. Not less than 60 percent of the resident beds shall be in bedrooms with one or two beds.
- b) General Requirements for Bedrooms
 - 1) Resident bedrooms shall have an entrance directly off a corridor with an entrance door which swings into the room.
 - 2) Resident bedrooms shall have adequate and satisfactory artificial light and be equipped in accordance with Section 350.2740(d) and (c).

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- 3) Residents shall have access to a toilet room without entering the general corridor area.
 - 4) The facility shall provide provide a closet or wardrobe of at least six square feet for each resident.
 - 5) Resident bedroom ~~floor~~ floors shall be at or above grade level.
 - 6) Each room used as a resident bedroom shall have at least one outside window, and a total window area to the outside equal to at least one-tenth the floor area of the room.
 - 7) No resident bedroom shall be located more than 120 feet from the nurses' station, clean utility room, and soiled utility room.
- c) Resident Bedrooms
- 1) Single resident bedroom shall contain at least 100 square feet. Multiple resident bedrooms shall contain at least 80 square feet per bed. Minimum usable floor area shall be exclusive of toilet rooms, closets, lockers, wardrobes, alcoves, vestibules, or clearly definable entryways.
 - 2) Multiple resident bedrooms shall not have more than four beds nor more than three beds deep from an outside wall. All beds shall have a minimum clearance of three feet at the foot and sides of the bed.
- d) Special Care Room
- 1) The facility shall provide provide a special care room for each 150 beds.
 - 2) ~~Provide--this~~ This room shall be provided with a private toilet room containing water closet, lavatory, bathtub or shower and all other necessary facilities to meet the resident's needs.
 - 3) This room shall be located to allow direct visual supervision from the nurses' station.
 - 4) The room may be included in the authorized maximum bed capacity for the facility. It is permissible for the room to be occupied by a resident, not in need of special care, provided the resident is clearly informed and understands he or she will be immediately transferred out of the room any time of day or night, whenever the room is needed to care for a resident requiring special care.
- e) Nurses' Station
- 1) The facility shall provide provide a minimum of one station per floor with direct access to the corridor for each nursing unit. The location of this station shall allow visual control of each resident room served without the use of mirrors. Separation shall be provided from the utility rooms. (B)
 - 2) The Nurses' station shall provide space for charting and storage for administrative supplies. (B)
 - 3) A lounge with toilet room shall be provided near each station for nursing staff. Lockers for safekeeping of coats and personal effects may be provided within this space or in a convenient central location. (B)
- f) Bath and Toilet Rooms
- 1) The resident bedroom toilet room shall serve no more than two resident rooms nor more than eight beds. The toilet room shall

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contain a water closet and a lavatory. The lavatory may be omitted from the toilet room when the resident room contains a lavatory.

- 2) The facility shall provide one wheelchair resident toilet room for each sex residing in a nursing unit. The room shall be accessible from the corridor. This room shall contain a water closet and lavatory.

- 3) A special wheelchair resident toilet room is not required when all resident toilet rooms can accommodate wheelchair residents.

- 4) The facility shall provide one training toilet room on each nursing floor that is accessible from the corridor. Provide three three-foot clearance at the front and both sides of the water closet shall be provided. This room shall contain a lavatory accessible for wheelchair use.

- 5) The facility shall provide one bathtub or shower for each ten resident beds per nursing unit which are not served by bathing or showering facilities in resident room rooms.

- 6) All shower stalls for residents not needing assistance shall be at least three feet square and shall have no curb.

- 7) The facility shall provide at least one bathtub for assisted bathing per nursing unit. There shall be a clear area at least three feet wide at both sides and one end of the tub.

- 8) The facility shall provide at least one shower stall for assisted showering per nursing unit. The shower stall shall be at least four feet square with no curb.

- 9) Provide a toilet room with a water closet and lavatory, accessible to the assisted bathtub and shower without entering the general corridor. This room may be arranged to serve as the training toilet facility.

- 10) Grouped bathing and toilet facilities shall be partitioned or curtained for privacy.

9) Utility Rooms

- 1) The clean clean utility room shall have direct access to a corridor, or access may be through the nurses' station entrance. This room shall contain work counters, single or double compartment sink with integral drainboard, storage cabinets, and an autoclave. (Autoclave may be waived in lieu of other methods if sterilization is approved by Department.)

- 2) A clean linen storage room or closet within the clean utility room shall be provided. If a closed cart system is used, storage may be in an alcove.

- 3) The soiled utility room shall have direct access to a corridor. This room shall contain work counters, double compartment sink with integral drainboard, storage cabinets, a clinical rim flush sink, and sanitizer (~~See Section 350-2.710(c)~~).

- 4) The changing room for a linen chute shall be large enough to unload the collecting cart with the door closed.

- h) A medicine station shall be provided for convenient and prompt 24 hour distribution of medicine to residents. The medicine

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station shall be under the nursing staff's visual control and contain a work counter, refrigerator, and locked storage for biologicals and drugs. A sink provision for handwashing and preparation of medication purposes shall be provided in the medicine station.

- i) A nourishment ~~nutrition~~ station shall be provided with a handwashing sink and equipment including refrigerator, and storage cabinets for serving nourishment between scheduled meals. Ice for residents' use shall be provided only by icemaker dispenser units.

- j) A room Room for examination and treatment of residents shall be provided and shall have a minimum floor area of 100 square feet, excluding space for vestibule, closets and work counters (whether fixed or movable). The minimum room dimension shall be ten feet. The room shall contain a lavatory or sink equipped for handwashing; a work counter; storage facilities; and a desk, counter, or shelf space for writing.

- k) Equipment storage rooms shall be provided for storage of equipment such as I.V. stands, inhalators, air mattresses, walkers, and wheelchairs.

- l) Parking space for wheelchairs shall be provided and located out of path of normal traffic.

(Source: Amended at 18 Ill. Reg. _____, effective January 14, 1994)

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1) Heading of the Part:

Long-Term Care for Under Age 22 Facilities Code

2) Code Citation:

77 Ill. Adm. Code 390

3) Section Numbers:

Amendments
 390.110
 390.120
 390.140
 390.150
 390.160
 390.282
 390.2660

Adopted Action:4) Statutory Authority:

Nursing Home Care Act
 Ill. Rev. Stat. 1991, ch. 111 1/2, pars. 4151-101 et seq.
 [210 ILCS 45]

5) Effective Date of Amendments:

January 14, 1994

6) Does this Rulemaking Contain an Automatic Repeal Date? Yes No XIf "yes," please specify date: 7) Does this Rulemaking Contain Any Incorporations By Reference? Yes No X8) Date Filed in Agency's Principal Office:

January 14, 1994

9) Date Notice(s) of Proposal was Published in Illinois Register:

July 30, 1993 - 17 Ill. Reg. 12128

10) Has the Joint Committee on Administrative Rules issued a Statement of Objection to these Rules? Yes No X

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If "yes," please complete the following:

A) Statement of Objection: , Ill. Reg. B) Agency Response: , Ill. Reg. C) Date Agency Response Submitted for Approval to the Joint Committee: 11) Difference Between Proposal and Final Version:

The following changes were made in response to comments received during the first notice or public comment period:

1. The Table of Contents and Authority Note were updated to reflect recently adopted amendments.
2. In the Source Note, the entry for March 31, 1993 was deleted and entries were added for May 6, 1993, September 3, 1993, October 3, 1993, and January 1, 1994.
3. Subpart headings were added in the text.
4. Statutory citations were corrected to cite both Ill. Rev. Stat. and ILCS, and the year and section number were deleted from ILCS cites.
5. In Sections 390.160 and 390.282, unlabeled text was moved to the left margin.
6. In Section 390.2660(i), subsections (i)(1), (2), and (3), which were inadvertently omitted from the first notice publication, were included.

The following changes were made in response to comments and suggestions of the Joint Committee on Administrative Rules:

1. In Section 390.110(c), the words "as required by the highest level of care being licensed" were deleted to reflect existing language on file.
2. In Section 390.110(f), the statutory language was shown as underlined, and the same text was inserted in regular type and shown as stricken through.
3. In Section 390.120(g)(2), "less than" was added before "eighteen" and in subsection (g)(3), "Nineteen (19)" was changed to "Eighteen (18)".
4. In Section 390.140(a)(2), the statutory citation was shown as "1991" to reflect existing

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language.

5. In Section 390.140(c), the citation was placed after the statutory language to reflect the existing rule on file.
6. In Section 390.150(h), the citation was placed after the statutory language to reflect the existing rule on file.

In addition, various typographical, grammatical and form changes were made in response to the comments from the Administrative Code Division and the Joint Committee on Administrative Rules.

- 12) Have all the changes agreed upon by the Agency and the Joint Committee been made as indicated in the agreement letter issued by the Joint Committee?

The Department has made all the changes to which it agreed with the Joint Committee.

- 13) Will the Rules Replace an Emergency Rule Currently in Effect?

Yes _____ No X

- 14) Are there any other Amendments Pending on this Part?

Yes _____ No X

If Yes:

Section Numbers	Proposed Action	Ill. Reg. Citation
_____	_____	_____

- 15) Summary and Purpose of Rules:

The rules in Part 390 govern the licensure of long-term care facilities for persons under age 22. These amendments include changes necessitated by recently enacted legislation and in response to a Recommendation from the Joint Committee on Administrative Rules (JCAR).

Section 390.110 - The rules are being amended in response to a Recommendation issued by JCAR at its June 16, 1992 meeting. The Recommendation requests that the Department amend Section 390.110 to include its policy regarding licensure for more than one level of care, which was inadvertently omitted from a previous rulemaking.

Section 390.120 - This section is amended in response to P.A. 87-1102 (I.L.B. 3796, effective January 1, 1993), which amended Sections 3-103, 3-110, 3-212, 3-215, and 3-805 of the Nursing

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Home Care Act to provide for the issuance of two-year licenses. The two-year license includes a \$400 application fee and will be issued to facilities that meet the criteria set forth in Section 3-110 of the Act. The criteria are based on the facility's performance record for the past 24 months. The amendments to Section 390.120 include the addition of new statutory language and provisions for prorating fees for facilities that receive two-year licenses.

Section 390.140 - This Section is also being amended in response to P.A. 87-1102 to state that the licensee shall qualify for issuance of a two-year license if the licensee has met the criteria contained in Section 3-110(b) of the Act for the last twenty-four consecutive months.

Section 390.150 - This Section is also being amended to reference the criteria for two-year licensure set forth in Section 3-110(b) of the Act.

Section 390.160 - Also in response to P.A. 87-1102, this Section is being amended to reflect a change in statutory language that deleted reference to a one-year renewal period.

Section 390.282 - This Section is being amended in response to P.A. 87-1056 (S.B. 1965, effective September 11, 1992), which amended the Nursing Home Care Act to permit the Department to assess a fine of not less than \$10,000 when death, serious mental or physical harm, permanent disability, or disfigurement results from a situation in which an "A" violation is issued. The amendments include correction of existing statutory language; addition of new statutory language concerning the assessment of fines; and reference to the criteria set forth in Section 390.286(a) of the rules, which are used by the Department to determine the amount of the fine.

Section 390.2660 - The amendment to this Section deletes an incorrect cross-reference in subsection (g)(3). The rule currently references Section 390.2730, which concerns plumbing systems and would require facilities to have a 3-compartment sink with one bowl of 14 inches or deeper in the soiled utility room. Such sinks may cost \$3000 and are unnecessary in a soiled utility room, where a standard three-compartment sink would be sufficient. In addition, some grammatical and format changes have been made in Section 390.2660.

- 16) Information and Questions regarding this Adopted Rulemaking shall be directed to:

Ms. Gail DeVito, Division of Governmental Affairs, Department of Public Health, 535 West Jefferson, Fifth Floor, Springfield, Illinois 62761, 217/782-6187.

The full text of the Adopted Amendments begins on the next page:

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TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER C: LONG-TERM CARE FACILITIES

PART 390
LONG-TERM CARE FOR UNDER AGE 22 FACILITIES CODE

SUBPART A: GENERAL PROVISIONS

Section	
390.110	General Requirements
390.120	Application for License
390.130	Licenses
390.140	Issuance of an Initial License for a New Facility
390.150	Issuance of an Initial License Due to a Change of Ownership
390.160	Issuance of a Renewal License
390.165	Criteria for Adverse License Actions
390.170	Denial of Initial License
390.175	Denial of Renewal of License
390.180	Revocation of License
390.190	Experimental Program Conflicting With Requirements
390.200	Inspections, Surveys, Evaluations and Consultation
390.210	Filing an Annual Attested Financial Statement
390.220	Information to Be Made Available to the Public by the Department
390.230	Information to Be Made Available to the Public By the Licensee
390.240	Municipal Licensing
390.250	Ownership Disclosure
390.260	Issuance of Conditional Licenses
390.270	Monitor and Receivership
390.271	Presentation of Findings
390.272	Determination to Issue a Notice of Violation or Administrative Warning
390.274	Determination of the Level of a Violation
390.276	Notice of Violation
390.277	Administrative Warning
390.278	Plans of Correction
390.280	Reports of Correction
390.282	Conditions for Assessment of Penalties
390.284	Calculation of Penalties
390.286	Determination to Assess Penalties
390.288	Reduction or Waiver of Penalties
390.290	Quarterly List of Violators
390.300	Alcoholism Treatment Programs in Long-Term Care Facilities
390.310	Department May Survey Facilities Formerly Licensed
390.320	Waivers
390.330	Definitions
390.340	Incorporated and Referenced Materials

SUBPART B: ADMINISTRATION

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Section	
390.500	Administrator

SUBPART C: POLICIES

Section	
390.610	Management Policies
390.620	Resident Care Policies
390.630	Admission and Discharge Policies
390.640	Contract Between Resident and Facility
390.650	Residents' Advisory Council
390.660	General Policies
390.670	Personnel Policies
390.675	Initial Health Evaluation for Employees
390.680	Child Care/Habilitation Aides
390.685	Student Interns
390.690	Disaster Preparedness
390.700	Serious Incidents and Accidents

SUBPART D: PERSONNEL

Section	
390.810	General
390.820	Categories of Personnel
390.830	Consultation Services

SUBPART E: HEALTH AND DEVELOPMENTAL SERVICES

Section	
390.1010	Service Programs
390.1020	Medical Services
390.1025	Life-Sustaining Treatments
390.1030	Physician Services
390.1035	Tuberculin Skin Test Procedures
390.1040	Nursing Services
390.1050	Dental Care Services
390.1060	Physical and Occupational Therapy Services
390.1070	Psychological Services
390.1080	Social Services
390.1090	Speech Pathology and Audiology Services
390.1100	Recreational and Activity Services
390.1110	Educational Services
390.1120	Work Activity and Prevocational Training Services

SUBPART F: RESTRAINTS AND SAFETY DEVICES, BEHAVIOR MANAGEMENT,
AND BEHAVIOR EMERGENCIES

Section	
390.1310	Restraints and Safety Devices

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Behavior Management
Behavior Emergencies

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Medication Policies and Procedures
Conformance with Physician's Orders
Administration of Medication
Labeling and Storage of Medications
Control of Narcotics and Legend Drugs

SUBPART H: RESIDENT AND FACILITY RECORDS

Resident Record Requirements
Content of Medical Records
Confidentiality of Resident's Records
Records Pertaining to Residents' Property
Retention and Transfer of Resident Records
Other Resident Record Requirements
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Retention of Facility Records
Other Facility Record Requirements

SUBPART I: FOOD SERVICE

Director of Food Services
Dietary Staff in Addition to Director of Food Services
Hygiene of Dietary Staff
Diet Orders
Adequacy of Diet and Meal Pattern
Infant and Therapeutic Diets
Scheduling Meals
Menu Planning
Food Preparation and Service
Preparation of Infant Formula
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SUBPART J: MAINTENANCE, HOUSEKEEPING, AND LAUNDRY

Maintenance
Housekeeping
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SUBPART K: FURNISHINGS, EQUIPMENT, AND SUPPLIES

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Furnishings
Equipment and Supplies
Sterilization of Supplies and Equipment

SUBPART L: WATER SUPPLY AND SEWAGE DISPOSAL

Codes
Water Supply
Sewage Disposal
Plumbing

SUBPART M: DESIGN AND CONSTRUCTION STANDARDS FOR NEW FACILITIES

Applicability of these Standards
Codes and Standards
Preparation of Drawings and Specifications
Site
Administration and Public Areas
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Therapy and Personal Care
Service Departments
General Building Requirements
Structural
Mechanical Systems
Plumbing Systems
Electrical Systems

SUBPART N: DESIGN AND CONSTRUCTION STANDARDS FOR EXISTING FACILITIES

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SUBPART O: RESIDENT'S RIGHTS

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390.3220	Restraints
390.3230	Abuse and Neglect
390.3240	Communication and Visitation
390.3250	Resident's Funds
390.3260	Residents' Advisory Council
390.3270	Contract With Facility
390.3280	Private Right of Action
390.3290	Transfer or Discharge
390.3300	Complaint Procedures
390.3310	Confidentiality
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390.3330	

SUBPART P: DAY CARE PROGRAMS

Section	Day Care in Long-Term Care Facilities
390.3510	

APPENDIX A Interpretation and Illustrative Services for Long-Term Care Facility for Residents Under 22 Years of Age

APPENDIX B	Forms for Day Care in Long-Term Care Facilities
TABLE A	Infant Feeding
TABLE B	Daily Nutritional Requirements By Age Group
TABLE C	Sound Transmissions Limitations
TABLE D	Pressure Relationships and Ventilation Rates of Certain Areas for New Long-Term Care Facilities for Persons Under Twenty-Two (22) Years of Age

TABLE E	Sprinkler Requirements
TABLE F	Disaster Preparedness Parameters - Relative Humidity and Temperature

AUTHORITY: Implementing and authorized by the Nursing Home Care Act (111. Rev. Stat. 1991, ch. 111 1/2, par. 4151-101 et seq.) [210 ILCS 45].

SOURCE: Adopted at 6 Ill. Reg. 1658, effective February 1, 1982; emergency amendment at 6 Ill. Reg. 3223, effective March 8, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 11622, effective September 14, 1982; amended at 6 Ill. Reg. 14557 and 14560, effective November 8, 1982; amended at 6 Ill. Reg. 14678, effective November 15, 1982; amended at 7 Ill. Reg. 282, effective December 22, 1982; amended at 7 Ill. Reg. 1927, effective January 28, 1983; amended at 7 Ill. Reg. 8574, effective July 11, 1983; amended at 7 Ill. Reg. 15821, effective November 15, 1983; amended at 7 Ill. Reg. 16988, effective December 14, 1983; amended at 8 Ill. Reg. 15585, 15589, and 15592, effective August 15, 1984; amended at 8 Ill. Reg. 16989, effective September 5, 1984; codified at 8 Ill. Reg. 19823; amended at 8 Ill. Reg. 24159, effective November

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29, 1984; amended at 8 Ill. Reg. 24656, effective December 7, 1984; amended at 8 Ill. Reg. 25083, effective December 14, 1984; amended at 9 Ill. Reg. 122, effective December 26, 1984; amended at 9 Ill. Reg. 10785, effective July 1, 1985; amended at 11 Ill. Reg. 16782, effective October 1, 1987; amended at 12 Ill. Reg. 931, effective December 24, 1987; amended at 12 Ill. Reg. 16780, effective October 1, 1988; emergency amendment at 12 Ill. Reg. 18243, effective October 24, 1988, for a maximum of 150 days; emergency expired March 23, 1989; amended at 13 Ill. Reg. 6301, effective April 17, 1989; amended at 13 Ill. Reg. 19521, effective December 1, 1989; amended at 14 Ill. Reg. 14904, effective October 1, 1990; amended at 15 Ill. Reg. 1878, effective January 25, 1991; amended at 16 Ill. Reg. 623, effective January 1, 1992; amended at 16 Ill. Reg. 14329, effective September 3, 1992; emergency amendment at 17 Ill. Reg. 2390, effective February 3, 1993, for a maximum of 150 days; emergency expired on July 3, 1993; emergency amendment at 17 Ill. Reg. 7974, effective May 6, 1993, for a maximum of 150 days; emergency expired on October 3, 1993; amended at 17 Ill. Reg. 15073, effective September 3, 1993; amended at 17 Ill. Reg. 16167, effective January 1, 1994; amended at 17 Ill. Reg. 19235, effective October 26, 1993; amended at 17 Ill. Reg. 19547, effective November 4, 1993; amended at 17 Ill. Reg. 21031, effective November 20, 1993; amended at 18 Ill. Reg. _____, effective January 14, 1994.

SUBPART A: GENERAL PROVISIONS

Section 390.110 General Requirements

- This Part applies to the operator/licensee of facilities, or distinct parts thereof, that are to be licensed and classified to provide nursing care to persons under 22 years of age. Any license issued and in effect prior to March 1, 1980, pursuant to the "Nursing Homes, Sheltered care homes, and homes for the aged Act" (111. Rev. Stat. 1977, ch. 111 1/2, par. 35.16 et seq.) shall remain valid and subject to the terms and conditions of the Nursing Home Care Act (the Act) (111. Rev. Stat. 1987 1991, ch. 111 1/2, par. 4151-101 et seq.) ~~as amended by Public Act 85-9687, effective December 9, 1987; Public Act 85-1103, effective August 13, 1988; and Public Act 85-1376, effective September 17, 1988~~ [210 ILCS 45] and all regulations promulgated thereunder until the expiration date shown on the face of such license.
- The license issued to each operator/licensee shall designate the licensee's name, facility name, address, the classification by level of service authorized for that facility, the number of beds authorized for each level, the date the license was issued and the expiration date. Such licenses shall be issued for a period of not less than six months nor more than 18 months. The Department will set the period of the license based on the license expiration dates of the facilities in the geographical area surrounding the facility in order to distribute the expiration dates as evenly as possible throughout the calendar year. (Section 3-110 of the Act)
- An applicant may request that the license issued by the Department of

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Public Health (the Department) have distinct parts classified according to levels of services. The distinct part must satisfactorily meet the applicable physical plant standards based on a level of service classification sought for that distinct part. If necessary to protect the health, welfare and safety of residents in a distinct part requiring higher standards, the Department shall require compliance with whatever additional physical plant standards are necessary in any distinct part, to achieve this protection. Administrative, supervisory, and other personnel may be shared by the entire facility, if so doing does not adversely affect meeting the total needs of the residents of the facility.

d) ~~The operator may not admit residents in excess of the licensed capacity of the facility. (See Section 2-209 of the Act) (B)~~

e) A long-term care facility for persons under 22 years of age licensed and classified under the Act shall not use in its title or description "Hospital", "Sanitarium", "Sanatorium", or any other word or description in its title or advertisements which indicates that a type of service is provided by the facility which the facility is not licensed to provide or, in fact, does not provide. A long-term care facility for persons under 22 years of age may use in its title or advertisement the words or description: "Nursing Home", "Intermediate Care", "Skilled Nursing Facility".

f) ~~Any person constructing or modifying a long-term care facility or portion thereof without obtaining the required permit from the Health Facilities Planning Board shall not be eligible to apply for licensure for that facility or portion thereof (Section 13.1 of the Illinois Health Facilities Planning Act (11. Rev. Stat. 1907 1991, ch. 111 1/2, par. 1163.1) [20 ILCS 3960]).~~

g) ~~The licensee shall give 90 days notice prior to voluntarily closing a facility or closing any part of a facility, or prior to closing any part of a facility if closing such part will require the transfer or discharge of more than ten percent of the residents. Such notice shall be given to the Department, to any residents who must be transferred or discharged, to the resident's representative, and to a member of the resident's family, where practicable. Notice shall state the proposed date of closing and the reason for closing. The licensee shall offer to assist the resident in securing an alternative placement and shall advise the resident on available alternatives. Where the resident is unable to choose an alternate placement and is not under guardianship, the Department shall be notified of the need for relocation assistance. The facility shall comply with all applicable laws and regulations until the date of closing, including those related to transfer or discharge of residents. The Department may place a relocation team in the facility as provided under the Act. (Section 3-473 of the Act) (h,~~

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h) Licensure for more than one level of care.

1) A facility may be licensed for more than one level of care. The licensee must designate the level of care that will be provided in each bedroom. Bedrooms of like licensed level of care must be contiguous to each other within each "nursing unit" as defined in Section 390.330. Each nursing unit may have up to two levels of care and must meet the construction standards for the highest licensed level of care in the nursing unit.

2) If a licensee wishes to designate a portion of its licensed beds as Intermediate Care for the Developmentally Disabled, the licensed beds must be located in a distinct part (as defined in Section 390.330) of the facility.

(Source: Amended at 18 Ill. Reg. _____, effective January 14, 1994.)

Section 390.120 Application for License

a) Any person acting individually or jointly with other persons who proposes to build, own, establish, or operate an intermediate care facility or skilled nursing facility shall submit application information on forms provided by the Department. The Department shall be furnished a written description of the proposed program to be provided, and other such information as it may require in order to determine the appropriate level of care for which the facility should be licensed. The application form and other required information shall be submitted and approved prior to surveys of the physical plant or review of building plans and specifications.

b) An application for a new facility shall be accompanied by a permit as required by the Illinois Health Facilities Planning Act (11. Rev. Stat. 1909 1991, ch. 111 1/2, par. 1151 et seq.) [20 ILCS 3960].

c) Application for a license to establish or operate an intermediate care facility or skilled nursing facility shall be made in writing and submitted, with other such information as the Department may require, on forms provided by the Department. (Section 3-103(1) of the Act)

d) All applications, except those of homes for the aged, shall be accompanied by an application fee of 200 dollars \$200 for an annual license and \$400 for a 2-year license. The application shall be under oath and the submission of false or misleading information shall be a Class A misdemeanor. The application shall contain the following information:

1) The name and address of the applicant if an individual, and if a firm, partnership, or association, of every member thereof, and in the case of a corporation, the name and address thereof, and of its officers and its registered agent, and in the case of a unit of local government, the name and address of its chief executive officer;

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- 2) The name and location of the facility for which a license is sought;
- 3) The name of the person or persons under whose management or supervision the facility will be conducted;
- 4) The number and type of residents for which maintenance, personal care, or nursing is to be provided; and
- 5) Such information relating to the number, experience, and training of the employees of the facility, and of the moral agreements for the operation of the facility, and of the moral character of the applicant and employees as the Department may deem necessary. (Section 3-103(2) of the Act)
- e) Ownership Change or Discontinuation
 - 1) The license is not transferable. It is issued to a specific licensee and for a specific location. The license and the valid current renewal certificate immediately become void and shall be returned to the Department when the facility is sold, or leased; or when operation is discontinued; or when operation is moved to a new location; or when the licensee (if an individual) dies; or when the licensee (if a corporation or partnership) dissolves or terminates; or when the licensee (whatever the entity) ceases to be.
 - 2) A license issued to a corporation shall become null, void and of no further effect upon the dissolution of the corporation. The license shall not be revived if the corporation is subsequently reinstated. A new license must be obtained in such cases.
- f) Each initial application shall be accompanied by a financial statement setting forth the financial condition of the applicant and by a statement from the unit of local government having zoning jurisdiction over the facility's location stating that the location of the facility is not in violation of a zoning ordinance. An initial application for a new facility shall be accompanied by a permit as required by the Illinois Health Facilities Planning Act. After the application is approved, the applicant shall advise the Department every six months of any changes in the information originally provided in the application. (Section 3-103(3) of the Act)
- g) The Department may issue licenses or renewals for periods of not less than six (6) months nor more than eighteen (18) months for facilities with annual licenses and not less than 18 months for facilities with 2-year licenses in order for the Department to distribute the expiration dates of all such licenses throughout the calendar year. The fees for these such licenses are shall be pro-rated on the basis of the portion of the year for which they are issued. (Section 3-110 of the Act) The pro-rated fee will be as follows:
 - 1) Six (6) months to less than twelve (12) months -- \$150.00;
 - 2) Twelve (12) months to less than eighteen (18) months -- \$200.00-;
 - 3) Eighteen (18) months to less than twenty-four (24) months -- \$350.00;
 - 4) Twenty-four (24) months to thirty (30) months -- \$400.00.

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(Source: Amended at 18 Ill. Reg. _____, effective January 14, 1994.)

Section 390.140 Issuance of an Initial License for a New Facility

- a) Upon receipt and review of an application for a license and inspection of the applicant facility, the Director shall issue a probationary license if he finds:
 - 1) The applicant is a person responsible and suitable to operate or to direct or participate in the operation of a facility by virtue of financial capacity, appropriate business or professional experience, a record of compliance with lawful orders of the Department and lack of revocation of a license during the previous five years;
 - 2) The facility is under the supervision of an administrator who is licensed under the Nursing Home Administrators Licensing and Disciplinary Act (Ill. Rev. Stat. 1991, ch. 111, pars. 3651 et seq.) [225 ILCS 701; and
 - 3) The facility is in substantial compliance with the Act and this Part. (Section 3-109 of the Act)
- b) The Department will issue a probationary license for 120 days from the date of issuance.
- c) Within 30 days prior to the termination of a probationary license, the Department shall fully and completely inspect the facility and, if the facility meets the applicable requirements for licensure, shall issue a license under Section 3-109 of the Act. (Section 3-116 of the Act)
- d) If the facility is not in compliance and satisfactory progress toward compliance is not being made, the Department will allow the probationary license to expire.
- e) If the Department finds that the facility does not meet the requirements for licensure but has made substantial progress toward meeting those requirements, the license may be renewed once for a period not to exceed 120 days from the expiration date of the initial probationary license. Under no condition may more than two successive probationary licenses be issued. (Section 3-116 of the Act)
- f) Prior to actual receipt by the operator of the license--certificate, the operator may begin operation upon receipt of written approval by the Department. The licensee shall qualify for issuance of a two-year license if the licensee has met the criteria contained in Section 3-110(b) of the Act for the last twenty-four consecutive months.

(Source: Amended at 18 Ill. Reg. _____, effective January 14, 1994.)

Section 390.150 Issuance of an Initial License Due to a Change of Ownership

- a) Upon receipt and review of an application for a license, the Director shall issue a probationary license if he finds:
 - 1) The applicant is a person responsible and suitable to operate or

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to direct or to participate in the operation of a facility by virtue of financial capacity, appropriate business or professional experience, a record of compliance with lawful orders of the Department and lack of revocation of a license during the previous five years;

- 2) The facility is under the supervision of an administrator who is licensed under the Nursing Home Administrators Licensing and Disciplinary Act; and
- 3) The facility is in substantial compliance with the Act and this Part. (Section 3-109 of the Act)
- b) Whenever ownership of a facility is transferred from the person named in a license to any other person, the transferee must obtain a new probationary license. The transferee shall notify the Department of the transfer and apply for a new license at least 30 days prior to final transfer. (Section 3-112 of the Act)
- c) The transferor shall notify the Department at least 30 days prior to operation of the facility until such time as the license is issued to the new transferee. (Section 3-112 of the Act)
- d) The license granted to the transferee shall be subject to any plan of correction submitted by the previous owner and approved by the Department and any conditions contained in a conditional license issued to the previous owner. If there are outstanding violations and no plan of correction has been submitted by the facility and approved by the Department, the Department may issue a conditional license and plan of correction as provided in Sections 3-311 through 3-317 of the Act in place of a probationary license. (Section 3-113 of the Act)
- e) The transferor shall remain liable for all penalties assessed against the facility which are imposed for violations occurring prior to transfer of ownership. (Section 3-114 of the Act)
- f) The Department will issue a probationary license for 120 days from the date of issuance.
- g) Within 30 days prior to the termination of a probationary license, the Department shall fully and completely inspect the facility and, if the facility meets the applicable requirements for licensure, shall issue a license under Section 3-109 of the Act. (Section 3-116 of the Act)
- If the facility is not in compliance and satisfactory progress toward compliance is not being made, the Department will allow the probationary license to expire.
- h) If the Department finds that the facility does not meet the requirements for licensure but has made substantial progress toward meeting those requirements, the license may be renewed once for a period not to exceed 120 days from the expiration date of the initial probationary license. (Section 3-116 of the Act)
- Under no condition may more than two successive probationary licenses be issued.
- i) The issuance date of the probationary license to the new owner will be the date the last licensure requirement is met as determined by the Department. Prior to actual receipt by the operator of the

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license certificate; the operator may begin operation upon receipt of written approval by the Department.

j) The licensee shall qualify for issuance of a two-year license if the licensee has met the criteria contained in Section 3-110(b) of the Act for the last twenty-four consecutive months.

(Source: Amended at 18 Ill. Reg. _____, effective January 14, 1994.)

Section 390.160 Issuance of a Renewal License

At least 120 days, but not more than 150 days, prior to license expiration, the licensee shall submit an application for renewal of the license in such form and containing such information as the Department requires. If the application is approved, and the facility is in compliance with all other licensure requirements, the license shall be renewed for an additional one-year period. (Section 3-115 of the Act)

(Source: Amended at 18 Ill. Reg. _____, effective January 14, 1994.)

Section 390.282 Conditions for Assessment of Penalties

The Department shall consider the assessment of a monetary penalty against a facility under the following conditions:

- a) When a notice of violation for a level A violation is issued.
 - 1) The penalty to be assessed for this violation shall be the greater of the following:
 - A) An amount not less than \$5000 as determined by the Director or his designee considering the factors outlined in Section 390.286(a), or
 - B) The total of the following:
 - i) \$5 per resident in the facility, plus
 - ii) \$20 per resident for each day of the violation, commencing on the day on which the notice of violation is received by the facility and ending on the day--the necessary corrective action is completed served under Section 3-301 of the Act and ending on the date the violation is corrected-- (Section--3-305(f))--of the Act, or
 - C) When death, serious mental or physical harm, permanent disability, or disfigurement results, a fine of not less than \$10,000, as determined by the Director or his designee considering the factors outlined in Section 390.286(a).
- (Section 3-305(l) of the Act)
- 2) The facility shall also be issued a conditional license for a period of six months as provided in Section 390.260.
- b) When a facility fails to abate or eliminate a level A violation immediately or within the period set by the Department in the notice

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of violation pursuant to Section 390.276(a)(4)(A).

- 1) The facility shall be cited for a repeat violation.
- 2) The penalty to be assessed shall be three times the penalty computed under subsection (a)(1) of this Section.
- 3) The license of the facility shall be revoked as provided in Section 390.180.

c) When a notice of violation for a level B violation is issued.

- 1) The penalty to be assessed for this violation shall be the greater of the following:

- A) An amount not less than \$500 as determined by the Director or his designee considering the factors outlined in Section 390.286(a), or

B) The total of the following:

- i) \$3 per resident in the facility, plus
- ii) \$.15 per resident for each day of the violation, commencing on the day-on-which-the date of the violation, violation is received-by-the-facility--and--ending--on the--day--the-necessary-corrective-action-is-completed served under Section 3-301 of the Act and ending on the date the violation is corrected. (Section 3-305(2) of the Act)

- 2) Upon acceptance of a plan of correction by the Department, assessment of the penalty shall be suspended by the Department. No additional penalty shall be imposed for days during which the plan of correction is in effect.

d) When a facility fails to correct a level B violation within the time period specified in the plan of correction approved by the Department.

- 1) The facility shall be cited for a repeat violation.
- 2) The penalty to be assessed shall be computed in accordance with subsection (c)(1) of this Section. Days during which the plan of correction was in effect shall be included in the calculation of the penalty.

- 3) The facility shall also be issued a conditional license for a period of at least six months as provided in Section 390.260.

e) When a notice of violation is issued for a violation of Article II of the Act with regard to the rights of a particular resident of the facility, the Department shall order the facility to reimburse the residents for any injuries incurred or if the amount of the injuries is less than \$100, the Department shall order the facility to pay \$100 to the resident. (Section 3-305(7) of the Act)

(Source: Amended at 18 Ill. Reg. _____, effective January 14, 1994)

Section 390.2660 Nursing Unit

- a) The number of resident beds, cribs or bassinets in a nursing unit shall not exceed 75.
- b) General Requirements for Bedrooms

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- 1) Resident bedrooms shall have an entrance directly off a corridor with an entrance door which swings into the room.
- 2) The facility shall provide a closet or wardrobe of at least four square feet for each resident.

3) Resident bedroom floors shall be at or above grade level.

- 4) Each room used as a resident bedroom shall have at least one outside window, with a total window area equal to one-tenth the floor area of the room.

5) There shall be separate bedrooms for males and females over six years of age unless the interdisciplinary team determines that separation is not necessary due to the functional level of individual residents.

6) A handwashing lavatory shall be provided in each bedroom.

- 7) Resident bedrooms shall have adequate and satisfactory artificial light and be equipped in accordance with Section 390.2740(d)(2).

8) Receptacles shall be provided in accordance with Section 390.2740(e).

- 9) Nurses' call system shall be provided in accordance with Section 390.2740(g).

10) Visual privacy shall be provided for each resident in multibed rooms in accordance with Section 390.2220(a)(4). Location of screen or curtain shall not restrict resident access to bathing facilities, toilet or lavatory.

- 11) Residents shall have access to a bathing/toilet room without entering the general corridor area.

12) No resident bedroom shall be located more than 120 feet from the nurses' station, clean utility room, and soiled utility room.

- 13) Vision panels shall be provided in corridor walls or room doors of each bedroom.

c) Resident Bedrooms

- 1) Each single bedroom used for a resident shall have at least 100 square feet of usable net floor area, not including any space taken up for closets, wardrobes, bathrooms, and clearly definable entryway areas.

2) Each multiple bedroom for residents shall have the following floor areas, exclusive of closets, wardrobes, bathrooms, and clearly defined entryways:

- A) Not less than 80 square feet per bed. Size: 38"-40" x 75"-84". No more than 4 beds per room.
- B) Not less than 70 square feet per small bed. Size: 37" to less than 38" x 61" to less than 75". No more than 4 beds per room.
- C) Not less than 65 square feet per large crib. Size: 30" to less than 37" x 56" to less than 61".
- D) Not less than 55 square feet per medium crib. Size: 27" to less than 30" x 43" to less than 56".
- E) Not less than 50 square feet per small crib. Size: 19" to less than 27" x 35" to less than 43".

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- F) Not less than 30 square feet per bassinets. Size: Smaller than 19" x 35". All sleeping accommodations shall be adequate in size to allow for the resident's comfort.
- 3) Multiple resident bedrooms shall not have more than four beds of any size located not more than three deep from the outside wall.
- 4) Any combination of beds, cribs and bassinets (of any size) may be placed in the same bedroom when appropriate to the functional levels of the residents. However, no bedroom shall contain more beds, cribs, and bassinets (of any size) than can be contained in 390 square feet of floor space, except that no more than four beds of any size can be contained in one room and such rooms shall not contain any cribs or bassinets of any size. In addition, the number of residents in a bedroom shall not exceed eight.
- 5) The facility shall provide a minimum clearance of three feet at the foot and side of all sleeping accommodations. Clearance is not required when accommodation is not occupied, however, an exit path must always be maintained in accordance with the requirements of the National Fire Protection Association's Standard No. 101: Life Safety Code.
- 6) The minimum dimension of bedrooms shall be ten feet between walls or a wall and any built-in furniture or storage space.
- d) Special Care Room
- 1) The facility shall provide one special care room for each nursing unit, complying with bedroom requirements in subsections (b) and (c) of this Section.
- 2) The facility shall provide one workroom with observation windows adjacent to special care room. Space within this room or in separate rooms shall be designed to include all or part of the following functions:
- A) Hygienic care including bathing, complying with this Section.
 - B) Separated soiled area with hampers for soiled linen, diapers and disposables. Provide this area shall be provided with a double compartment sink with integral drainboard and clinical rim flush sink.
 - C) Separated clean area with storage cabinets, work counter, refrigerator, formula storage-dispensing and clean linen storage.
 - D) Gowning for staff.
- 3) When more than one resident is housed in this room, it may only be used to isolate residents with the same communicable disease.
- 4) This room shall be located to allow direct appropriate visual supervision from the nurses' station.
- 5) This room may be included in the authorized maximum bed capacity for the facility.
- 6) It is permissible for the room to be occupied by residents not in need of special care, provided the resident is clearly informed and understands they that he or she will be immediately transferred out of the room any time of day or night, whenever the room is needed to care for a resident requiring special

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- e) Nurses' Station (B)
- 1) The facility shall provide a minimum of one nursing station for each nursing unit. The station shall have direct access to a corridor, shall be located near the area it will serve, and shall be designed to provide visual control of the area. It shall be separated satisfactorily from the nurses' utility rooms.
- 2) One or more nursing units may be combined with a central nursing station if sufficient space is provided for all nursing functions.
- 3) A toilet room shall be provided near each station for nursing staff. A lounge with lockers for safekeeping of coats and personal effects shall be provided either within this space or in a convenient central location.
- f) Bathing and Toilet Rooms
- 1) The bathing/toilet room adjacent to resident room shall serve no more than two resident rooms nor more than 16 beds, cribs or bassinets.
- 2) Fixtures shall be provided as follows:
- A) Lavatories: One per eight.
 - B) Clinical rim flush sink and water closet for residents capable of using them: One per eight.
 - C) Bathing or shower fixtures: One per ten.
- 3) The lavatory may be omitted from the bathing/toilet room when installed in the resident room.
- 4) The facility shall provide a minimum of one bathtub for assisted bathing per nursing unit. There shall be a clear area at least three feet wide on one long side.
- 5) The facility shall provide a minimum of one shower stall for assisted showering per nursing unit. The shower stall shall be at least four feet square with no curb.
- 6) Other acceptable fixtures for bathing the residents may be provided with Department approval.
- 7) All plumbing fixtures shall be designed and installed to satisfactorily serve the residents using them.
- 8) There shall be separate toilet and bathing areas on each floor for males and females over six years of age unless the interdisciplinary team determines that separation is not necessary due to the functional level of individual residents.
- 9) The facility shall provide one wheelchair toilet room for residents residing in the nursing unit. This room shall be accessible from the corridor and shall contain a water closet and lavatory.
- 10) Wheelchair resident toilet rooms are not required when all resident toilet rooms can accommodate wheelchair residents.
- 11) Grouped bathing and toilet facilities shall be partitioned or curtained for privacy.
- g) Utility Rooms

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- 1) The clean linen utility room shall have direct access to a corridor or access may be through the nurses' station entrance. This room shall contain work counters, single or double compartment sink with integral drainboard, storage cabinets, and an autoclave. (Autoclave may be waived in lieu of other methods if sterilization is approved by Department.)
- 2) A clean linen storage room or closet within the clean utility room shall be provided. If a closed cart system is used, storage may be in an alcove.
- 3) The soiled utility room shall have direct access to a corridor. This room shall contain work counters, double compartment sink with integral drainboard, storage cabinets with shelves, a clinical rim flush sink, and sanitizer (See Section 390-2730 390.2230).
- 4) The charging room for a linen chute shall be large enough to unload the collecting cart with the corridor door closed.
- h) A medicine Medicine station shall be provided for convenient and prompt 24 hour distribution of medicine to residents.
 - 1) The medicine preparation room shall be under the nursing staff's visual control and contain a work counter, refrigerator, and locked storage for biologicals and drugs. Provision A sink for handwashing and preparation of medication purposes shall be provided in the medication preparation room.
 - 2) If medicine dispensing carts are used, a specific space shall be provided which may be located in the nurses' station or in an alcove or other space under the direct control of the nursing staff. Provision A sink for handwashing and preparation of medication purposes shall be provided in the nurses' station.
 - i) A nourishment Nourishment station shall be provided with a handwashing sink and equipment including refrigerator, and storage cabinets for serving nourishment between scheduled meals.
 - 1) Commercially prepared formulas can be stored and dispensed from this room or from the special care workroom.
 - 2) Ice for residents' use shall be provided only by icemaker dispenser unit.
 - 3) There shall be a separate room or area for bottle and nipple washing and cleaning, equipped as necessary to carry out proper technique.
 - j) A room Room for examination and treatment of residents shall be provided and shall have a minimum floor area of 100 square feet, excluding space for vestibule, closets and work counters (whether fixed or movable). The minimum room dimension shall be ten feet. The room shall contain a lavatory or sink equipped for handwashing; a work counter; storage facilities; and as desk, counter, or shelf space for writing. When this room is not being used for examination or treatment, it may be used for other functions (such as an office).
 - k) Equipment storage room rooms shall be provided for storage of equipment such as I.V. stands, inhalators, air mattresses, walkers, and wheelchairs.

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- 1) Parking space for wheelchairs shall be provided and located out of path of normal traffic.
(Source: Amended at 18 Ill. Reg. _____, effective January 14, 1994)

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1) Heading of the Part:

Sheltered Care Facilities Code

2) Code Citation:

77 Ill. Adm. Code 330

3) Section Numbers:

Amendments
330.120
Amendments
330.140
Amendments
330.150
Amendments
330.160
Amendments
330.282

Adopted Action:4) Statutory Authority:

Nursing Home Care Act
Ill. Rev. Stat. 1991, ch. 111 1/2, pars. 4151-101 et seq.
[210 ILCS 45]

5) Effective Date of Amendments:

January 14, 1994

6) Does this Rulemaking Contain an Automatic Repeal Date?

Yes

No X

If "yes," please specify date: _____

7) Does this Rulemaking Contain Any Incorporations By Reference?

Yes

No X8) Date Filed in Agency's Principal Office:

January 14, 1994

9) Date Notice(s) of Proposal was Published in Illinois Register:

July 30, 1993 - 17 Ill. Reg. 12188

10) Has the Joint Committee on Administrative Rules issued a Statement of Objections to this/these Rules?

Yes

No X

If "yes," please complete the following:

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A) Statement of Objection:

Ill. Reg. _____

B) Agency Response:

Ill. Reg. _____

C) Date Agency Response Submitted for Approval to the Joint Committee:11) Difference Between Proposal and Final Version:

The following changes were made in response to comments received during the first notice or public comment period:

1. The Table of Contents and Authority Note were updated to reflect recently adopted amendments.
2. In the Source Note, the entry for March 31, 1993 was deleted and entries were added for May 6, 1993, September 3, 1993, October 3, 1993, and January 1, 1994.
3. Subpart headings were added in the text.
4. Statutory citations were corrected to cite both Ill. Rev. Stat. and ILCS.

The following changes were made in response to comments and suggestions of the Joint Committee on Administrative Rules:

1. In Section 330.120(b), the citation was changed to show "198991"
2. In Section 330.120(g)(2), "less than" was added before "eighteen" and in subsection (g)(3), "Nineteen (19)" was changed to "Eighteen (18)."
3. In Section 330.140(c) and (d), the citations were placed after the statutory language to reflect the existing rule on file.
4. In Section 330.150(g) and (h), the citations were placed after the statutory language to reflect the existing rule on file.
5. In Section 330.282(a)(1)(B)(ii), "or" was added at the end.

In addition, various typographical, grammatical and form changes were made in response to the comments from the Administrative Code Division and the Joint Committee on Administrative Rules.

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- 12) Have all the changes agreed upon by the Agency and the Joint Committee been made as indicated in the agreement letter issued by the Joint Committee?

The Department has made all the changes to which it agreed with the Joint Committee.

- 13) Will the Rules Replace an Emergency Rule Currently in Effect?

Yes _____ No X

- 14) Are there any other Amendments Pending on this Part?

Yes _____ No _____

If Yes:

<u>Section Numbers</u>	<u>Proposed Action</u>	<u>Ill. Reg. Citation</u>
_____	_____	_____

- 15) Summary and Purpose of Rules:

The rules in Part 330 govern the licensure of sheltered care facilities. These amendments include changes necessitated by recently enacted legislation.

Section 330.120 - The rules are being amended in response to P.A. 87-1102 (H.B. 3796, effective January 1, 1993), which amended Sections 3-103, 3-110, 3-212, 3-215, and 3-805 of the Nursing Home Care Act to provide for the issuance of two-year licenses. The two-year license includes a \$400 application fee and will be issued to facilities that meet the criteria set forth in Section 3-110 of the Act. The criteria are based on the facility's performance record for the past 24 months. The amendments to Section 330.120 include the addition of new statutory language and provisions for prorating fees for facilities that receive two-year licenses.

Section 330.140 - This Section is also being amended in response to P.A. 87-1102 to state that the licensee shall qualify for issuance of a two-year license if the licensee has met the criteria contained in Section 3-110(b) of the Act for the last twenty-four consecutive months.

Section 330.150 - This Section is also being amended to reference the criteria for two-year licensure set forth in Section 3-110(h) of the Act.

Section 330.160 - Also in response to P.A. 87-1102, this Section is being amended to reflect a change in statutory language that deleted reference to a one-year renewal period.

Section 330.282 - This Section is being amended in response to P.A. 87-1056 (S.B. 1965, effective September 11, 1992), which amended the Nursing Home Care Act to permit the

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Department to assess a fine of not less than \$10,000 when death, serious mental or physical harm, permanent disability, or disfigurement results from a situation in which an "A" violation is issued. The amendments include correction of existing statutory language; addition of new statutory language concerning the assessment of fines; and reference to the criteria set forth in Section 330.286(a) of the rules, which are used by the Department to determine the amount of the fine.

- 16) Information and Questions regarding this Adopted Rulemaking shall be directed to:

Ms. Gail DeVito, Division of Governmental Affairs, Department of Public Health, 535 West Jefferson, Fifth Floor, Springfield, Illinois 62761, 217/782-6187.

The full text of the Adopted Amendments begins on the next page:

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENT(S)

TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER c: LONG-TERM CARE FACILITIES

PART 330

SHELTERED CARE FACILITIES CODE

SUBPART A: GENERAL PROVISIONS

Section	
330.110	General Requirements
330.120	Application for License
330.130	License
330.140	Issuance of an Initial License For a New Facility
330.150	Issuance of an Initial License Due to a Change of Ownership
330.160	Issuance of a Renewal License
330.165	Criteria for Adverse Licensure Actions
330.170	Denial of Initial License
330.175	Denial of Renewal of License
330.180	Revocation of License
330.190	Experimental Program Conflicting With Requirements
330.200	Inspections, Surveys, Evaluations and Consultation
330.210	Filing an Annual Attested Financial Statement
330.220	Information to be Made Available to the Public By the Department
330.230	Information to be Made Available to the Public By the Licensee
330.240	Municipal Licensing
330.250	Ownership Disclosure
330.260	Issuance of Conditional Licenses
330.270	Monitoring and Receivership
330.271	Presentation of Findings
330.272	Determination to Issue a Notice of Violation or Administrative Warning
330.274	Determination of the Level of a Violation
330.276	Notice of Violation
330.277	Administrative Warning
330.278	Plans of Correction
330.280	Reports of Correction
330.282	Conditions for Assessment of Penalties
330.284	Calculation of Penalties
330.286	Determination to Assess Penalties
330.288	Reduction or Waiver of Penalties
330.290	Quarterly List of Violators
330.300	Alcoholism Treatment Programs in Long-Term Care Facilities
330.310	Department May Survey Facilities Formerly Licensed
330.320	Waivers
330.330	Definitions
330.340	Incorporated and Referenced Materials

SUBPART B: ADMINISTRATION

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TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER c: LONG-TERM CARE FACILITIES

SUBPART C: POLICIES

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330.510	Administrator
330.710	Resident Care Policies
330.720	Admission and Discharge Policies
330.730	Contract Between Resident and Facility
330.740	Residents' Advisory Council
330.750	General Policies
330.760	Personnel Policies
330.765	Initial Health Evaluation for Employees
330.770	Disaster Preparedness
330.780	Serious Incidents and Accidents
330.910	Personnel
330.913	Nursing and Personal Care Assistants (Repealed)
330.916	Student Interns (Repealed)
330.920	Consultation Services
330.930	Personnel Policies

SUBPART D: PERSONNEL

SUBPART E: HEALTH SERVICES AND MEDICAL CARE OF RESIDENTS

Section	
330.1110	Medical Care Policies
330.1120	Personal Care
330.1125	Life Sustaining Treatments
330.1130	Communicable Disease Policies
330.1135	Tuberculin Skin Test Procedures
330.1140	Behavior Emergencies

SUBPART F: RESTORATIVE SERVICES

Section	
330.1310	Activity Program
330.1320	Work Programs
330.1330	Written Policies for Restorative Services

SUBPART G: MEDICATIONS

Section	
330.1510	Medication Policies
330.1520	Administration of Medication
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SUBPART H: RESIDENT AND FACILITY RECORDS

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SUBPART I: FOOD SERVICE

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330.1910	Director of Food Services
330.1920	Dietary Staff in Addition to Director of Food Services
330.1930	Hygiene of Dietary Staff
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SUBPART J: MAINTENANCE, HOUSEKEEPING AND LAUNDRY

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330.2210	Maintenance
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SUBPART K: FURNISHINGS, EQUIPMENT, AND SUPPLIES

Section	
330.2410	Furnishings
330.2420	Equipment and Supplies

SUBPART L: WATER SUPPLY AND SEWAGE DISPOSAL

Section	
330.2610	Codes
330.2620	Water Supply
330.2630	Sewage Disposal
330.2640	Plumbing

SUBPART M: DESIGN AND CONSTRUCTION STANDARDS FOR NEW SHELTERED CARE FACILITIES

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Section	
330.2810	Applicable Requirements (Repealed)
330.2820	Applicability of These Standards
330.2830	Submission of a Program Narrative
330.2840	New Constructions, Additions, Conversions, and Alterations
330.2850	Preparation and Submission of Drawings and Specifications
330.2860	First Stage Drawings
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330.3050	Site
330.3060	General Building Requirements
330.3070	Administration
330.3080	Corridors
330.3090	Bath and Toilet Rooms
330.3100	Living, Dining, Activity Rooms
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SUBPART N: FIRE PROTECTION STANDARDS FOR NEW SHELTERED CARE FACILITIES

Section	
330.3310	Applicable Requirements (Repealed)
330.3320	Applicability of These Standards
330.3330	Fire Protection
330.3340	Fire Department Service and Water Supply
330.3350	General Building Requirements
330.3360	Exit Facilities and Subdivision of Floor Areas
330.3370	Stairways, Vertical Openings, and Doorways
330.3380	Corridors
330.3390	Exit Lights and Directional Signs
330.3400	Hazardous Areas and Combustible Storage
330.3410	Fire Alarm and Detection System
330.3420	Fire Extinguishers, Electric Wiring, and Miscellaneous
330.3430	Use of Fire Extinguishers, Evacuation Plan, and Fire Drills

SUBPART O: DESIGN AND CONSTRUCTION STANDARDS FOR

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NOTICE OF ADOPTED AMENDMENT(S)

EXISTING SHELTERED CARE FACILITIES

Section	Site
330.3610	General Building Requirements
330.3620	Administration
330.3630	Corridors
330.3640	Bath and Toilet Rooms
330.3650	Living, Dining, and Activity Rooms
330.3660	Bedrooms
330.3670	Special Care Room
330.3680	Kitchen
330.3690	Laundry Room
330.3700	Housekeeping and Service Rooms and Storage Space
330.3710	Plumbing and Heating
330.3720	Electrical
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SUBPART P: FIRE PROTECTION STANDARDS FOR EXISTING SHELTERED CARE FACILITIES

Section	Site
330.3910	Fire Protection
330.3920	Fire Department Service and Water Supply
330.3930	Occupancy and Fire Areas
330.3940	Exit Facilities and Subdivision of Floor Areas
330.3950	Stairways, Vertical Openings, and Doorways
330.3960	Exit and Fire Escape Lights and Directional Signs
330.3970	Hazardous Areas and Combustible Storage
330.3980	Fire Alarm and Detection System
330.3990	Fire Extinguishers, Electric Wiring, and Miscellaneous
330.4000	Use of Fire Extinguishers, Evacuation Plan, and Fire Drills

SUBPART Q: RESIDENT'S RIGHTS

Section	Site
330.4210	General
330.4220	Medical and Personal Care Program
330.4230	Restraints
330.4240	Abuse and Neglect
330.4250	Communication and Visitation
330.4260	Resident's Funds
330.4270	Residents' Advisory Council
330.4280	Contract With Facility
330.4290	Private Right of Action
330.4300	Transfer or Discharge
330.4310	Complaint Procedures
330.4320	Confidentiality
330.4330	Facility Implementation

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SUBPART R: DAY CARE PROGRAMS

Section	Site
330.4510	Day Care In Long-Term Care Facilities
APPENDIX A	Interpretation, Components, and Illustrative Services for Sheltered Care Facilities
APPENDIX B	Classification of Distinct Part of a Facility For Different Levels of Service (Repealed)
APPENDIX C	Forms for Day Care in Long-Term Care Facilities
APPENDIX D	Criteria for Activity Directors Who Need Only Minimal Consultation
TABLE A	Disaster Preparedness Parameters -- Relative Humidity and Temperature

AUTHORITY: Implementing and authorized by the Nursing Home Care Act (Ill. Rev. Stat. 1991, ch. 111 1/2, pars. 4151-101 et seq.) [210 ILCS 45].

SOURCE: Emergency rules adopted at 4 Ill. Reg. 10, p. 807, effective March 1, 1980, for a maximum of 150 days; adopted at 4 Ill. Reg. 30, p. 933, effective July 28, 1980; amended at 6 Ill. Reg. 5981, effective May 3, 1982; amended at 6 Ill. Reg. 8198, effective June 29, 1982; amended at 6 Ill. Reg. 14547, effective November 8, 1982; amended at 6 Ill. Reg. 14681, effective November 15, 1982; amended at 7 Ill. Reg. 1963, effective January 28, 1983; amended at 7 Ill. Reg. 6971, effective May 17, 1983; amended at 7 Ill. Reg. 15825, effective November 15, 1983; amended at 8 Ill. Reg. 15596, effective August 15, 1984; amended at 8 Ill. Reg. 15941, effective August 17, 1984; codified at 8 Ill. Reg. 19790; amended at 8 Ill. Reg. 24241, effective November 28, 1984; amended at 8 Ill. Reg. 24696, effective December 7, 1984; amended at 9 Ill. Reg. 2952, effective February 25, 1985; amended at 9 Ill. Reg. 10974, effective July 1, 1985; amended at 11 Ill. Reg. 16879, effective October 1, 1987; amended at 12 Ill. Reg. 1017, effective December 24, 1987; amended at 12 Ill. Reg. 16870, effective October 1, 1988; emergency amendment at 12 Ill. Reg. 18939, effective October 24, 1988, for a maximum of 150 days; emergency expired March 23, 1989; amended at 13 Ill. Reg. 6562, effective April 17, 1989; amended at 13 Ill. Reg. 19580, effective December 1, 1989; amended at 14 Ill. Reg. 14928, effective October 1, 1990; amended at 15 Ill. Reg. 516, effective January 1, 1991; amended at 16 Ill. Reg. 651, effective January 1, 1992; amended at 16 Ill. Reg. 14370, effective September 3, 1992; emergency amendment at 17 Ill. Reg. 2405, effective February 3, 1993, for a maximum of 150 days; emergency expired on July 3, 1993; emergency amendment at 17 Ill. Reg. 8000, effective May 6, 1993, for a maximum of 150 days; emergency expired on October 1, 1993; amended at 17 Ill. Reg. 15089, effective September 3, 1993; amended at 17 Ill. Reg. 16180, effective January 1, 1994; amended at 17 Ill. Reg. 19258, effective October 26, 1993; amended at 17 Ill. Reg. 19576, effective November 3, 1993; amended at 17 Ill. Reg. 21044, effective November 20, 1993; amended at 18 Ill. Reg. _____, effective January 14, 1994.

SUBPART A: GENERAL PROVISIONS

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Section 330.120 Application for License

- a) Any person acting individually or jointly with other persons who proposes to build, own, establish, or operate a sheltered care facility shall submit application information on forms provided by the Department. The Department shall be furnished a written description of the proposed program to be provided, and other such information as it may require in order to determine the appropriate level of care for which the facility should be licensed. The application form and other required information shall be submitted and approved prior to surveys of the physical plant or review of building plans and specifications.
- b) An application for a new facility shall be accompanied by a permit as required by the Illinois Health Facilities Planning Act (Ill. Rev. Stat. 1989 1991, ch. 111 1/2, par. 1151 et seq.) [20 ILCS 3960].
- c) Application for a license to establish or operate a sheltered care facility shall be made in writing and submitted, with other such information as the Department may require, on forms provided by the Department. (Section 3-103(1) of the Act)
- d) All applications, except those of homes for the aged, shall be accompanied by an application fee of ~~200-dollars~~ \$200 for an annual license and \$400 for a 2 year license. The application shall be under oath and the submission of false or misleading information shall be a Class A misdemeanor. The application shall contain the following information:
- 1) The name and address of the applicant if an individual, and if a firm, partnership, or association, of every member thereof, and in the case of a corporation, the name and address thereof and of its officers and its registered agent, and in the case of a unit of local government, the name and address of its chief executive officer;
 - 2) The name and location of the facility for which a license is sought;
 - 3) The name of the person or persons under whose management or supervision the facility will be conducted;
 - 4) The number and type of residents for which maintenance, personal care, or nursing is to be provided; and
 - 5) Such information relating to the number, experience, and training of the employees of the facility, any management agreements for the operation of the facility, and of the moral character of the applicant and employees as the Department may deem necessary. (Section 3-103(2) of the Act)
- e) Ownership Change or Discontinuation
- 1) The license is not transferable. It is issued to a specific licensee and for a specific location. The license and the valid current renewal certificate immediately become void and shall be returned to the Department when the facility is sold, or leased; or when operation is discontinued; or when operation is moved to a new location; or when the licensee (if an individual) dies; or when the licensee (if a corporation or partnership) dissolves or

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- terminates; or when the licensee (whatever the entity) ceases to be.
- 2) A license issued to a corporation shall become null, void and of no further effect upon the dissolution of the corporation. The license shall not be revived if the corporation is subsequently reinstated. A new license must be obtained in such cases.
- f) Each initial application shall be accompanied by a financial statement setting forth the financial condition of the applicant and by a statement from the unit of local government having zoning jurisdiction over the facility's location stating that the location of the facility is not in violation of a zoning ordinance. An initial application for a new facility shall be accompanied by a permit as required by the Illinois Health Facilities Planning Act. After the application is approved, the applicant shall advise the Department every six months of any changes in the information originally provided in the application. (Section 3-103(3) of the Act)
- g) The Department may issue licenses or renewals for periods of not less than six (6) months nor more than eighteen (18) months for facilities with annual licenses and not less than 18 months nor more than 30 months for facilities with 2-year licenses in order ~~for the Department~~ to distribute the expiration dates of all such licenses throughout the calendar year. The fees for ~~these~~ such licenses are shall be pro-rated on the basis of the portion of the year for which they are issued. (Section 3-110 of the Act) The pro-rated fee will be as follows:
- 1) Six (6) months to less than twelve (12) months -- \$150.00;
 - 2) Twelve (12) months to less than eighteen (18) months -- \$200.00-1
 - 3) Eighteen (18) months to less than twenty-four (24) months -- \$350.00;
 - 4) Twenty-four (24) months to thirty (30) months -- \$400.00.
- (Source: Amended at 18 Ill. Reg. _____, effective January 14, 1994.)
- Section 330.140 Issuance of an Initial License For a New Facility**
- a) Upon receipt and review of an application for a license and inspection of the applicant facility, the Director shall issue a probationary license if he finds:
- 1) The applicant is a person responsible and suitable to operate or to direct or participate in the operation of a facility by virtue of financial capacity, appropriate business or professional experience, a record of compliance with lawful orders of the Department and lack of revocation of a license during the previous five years; and
 - 2) The facility is in substantial compliance with the Act and this Part. (Section 3-109 of the Act)
- b) The Department will issue a probationary license for 120 days from the date of issuance.

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- c) Within 30 days prior to the termination of a probationary license, the Department shall fully and completely inspect the facility and, if the facility meets the applicable requirements for licensure, shall issue a license under Section 3-109 of the Act. (Section 3-116 of the Act) If the facility is not in compliance and satisfactory progress toward compliance is not being made, the Department will allow the probationary license to expire.
- d) If the Department finds that the facility does not meet the requirements for licensure but has made substantial progress toward meeting those requirements, the license may be renewed once for a period not to exceed 120 days from the expiration date of the initial probationary license. (Section 3-116 of the Act) Under no condition may more than two successive probationary licenses be issued.
- e) ~~Prior to actual receipt by the operator of the license certificate, the operator may begin operation upon receipt of approval by the Department. The licensee shall qualify for issuance of a two-year license if the licensee has met the criteria contained in Section 3-110(b) of the Act for the last twenty-four consecutive months.~~

(Source: Amended at 18 Ill. Reg. _____, effective January 14, 1994.)

Section 330.150 Issuance of an Initial License Due to a Change of Ownership

- a) Upon receipt and review of an application for a license the Director shall issue a probationary license if he finds:
- 1) The applicant is a person responsible and suitable to operate or to direct or to participate in the operation of a facility by virtue of financial capacity, appropriate business or professional experience, a record of compliance with lawful orders of the Department and lack of revocation of a license during the previous five years; and
 - 2) The facility is in substantial compliance with the Act and this part. (Section 3-109 of the Act)
- b) Whenever ownership of a facility is transferred from the person named in a license to any other person, the transferee must obtain a new probationary license. The transferee shall notify the Department of the transfer and apply for a new license at least 30 days prior to final transfer. (Section 3-112 of the Act)
- c) The transferor shall notify the Department at least 30 days prior to final transfer. The transferor shall remain responsible for the operation of the facility until such time as the license is issued to the new transferee. (Section 3-112 of the Act)
- d) The license granted to the transferee shall be subject to a plan of correction submitted by the previous owner and approved by the Department and any conditions contained in a conditional license issued to the previous owner. If there are outstanding violations and no plan of correction has been submitted by the facility and approved by the Department, the Department may issue a conditional license and

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- plan of correction as provided in Section 3-311 through 3-317 of the Act in place of a probationary license. (Section 3-113 of the Act)
- e) The transferor shall remain liable for all penalties assessed against the facility which are imposed for violations occurring prior to transfer of ownership. (Section 3-114 of the Act)
- f) The Department will issue a probationary license for 120 days from the date of issuance.
- g) Within 30 days prior to the termination of a probationary license, the Department shall fully and completely inspect the facility and, if the facility meets the applicable requirements for licensure, shall issue a license under Section 3-109 of the Act. (Section 3-116 of the Act) If the facility is not in compliance and satisfactory progress toward compliance is not being made, the Department will allow the probationary license to expire.
- h) If the Department finds that the facility does not meet the requirements for licensure but has made substantial progress toward meeting those requirements, the license may be renewed once for a period not to exceed 120 days from the expiration date of the initial probationary license. (Section 3-116 of the Act) Under no condition may more than two successive probationary licenses be issued.
- i) The issuance date of the probationary license to the new owner will be the date the last licensure requirement is met as determined by the Department. ~~Prior to actual receipt by the operator of the license certificate, the operator may begin operation upon receipt of approval by the Department.~~
- j) The licensee shall qualify for issuance of a two-year license if the licensee has met the criteria contained in Section 3-110(b) of the Act for the last twenty-four consecutive months.

(Source: Amended at 18 Ill. Reg. _____, effective January 14, 1994.)

Section 330.160 Issuance of a Renewal License

At least 120 days, but not more than 150 days, prior to license expiration, the licensee shall submit an application for renewal of the license in such form and containing such information as the Department requires. If the application is approved, and the facility is in compliance with all other licensure requirements, the license shall be renewed for an additional one-year period. (Section 3-115 of the Act)

(Source: Amended at 18 Ill. Reg. _____, effective January 14, 1994.)

Section 330.282 Conditions for Assessment of Penalties

The Department shall consider the assessment of a monetary penalty against a facility under the following conditions

- a) When a notice of violation for a level A violation is issued.

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1) The penalty to be assessed for this violation shall be the greater of the following:

A) An amount not less than \$5000 as determined by the Director or his designee considering the factors outlined in Section 330.286(a), or

B) The total of the following:

i) \$5 per resident in the facility, plus
 ii) \$.20 per resident for each day of the violation, commencing on the day on which the notice of violation is received by the facility and ending on the day the necessary corrective action is completed, served under Section 3-301 of the Act and ending on the date the violation is corrected. (Section 3-305(1) of the Act)

C) When death, serious mental or physical harm, permanent disability, or disfigurement results, a fine of not less than \$10,000 as determined by the Director or his designee considering the factors outlined in Section 330.286(a), (Section 3-305(1) of the Act)

2) The facility shall also be issued a conditional license for a period of six months as provided in Section 330.260.

b) When a facility fails to abate or eliminate a level A violation immediately or within the period set by the Department in the notice of violation pursuant to Section 330.276(a)(4)(A).

1) The facility shall be cited for a repeat violation.

2) The penalty to be assessed shall be three times the penalty computed under subsection (a)(1) of this Section.

3) The license of the facility shall be revoked as provided in Section 330.180.

c) When a notice of violation for a level B violation is issued.

1) The penalty to be assessed for this violation shall be the greater of the following:

A) An amount not less than \$500 as determined by the Director or his designee considering the factors outlined in Section 330.286(a), or

B) The total of the following:

i) \$3 per resident in the facility, plus
 ii) \$.15 per resident for each day of the violation, commencing on the day date on which the a notice of violation is served under Section 3-301 of the Act and ending on the date the violation is corrected received by the facility and ending on the day the necessary corrective action is completed. (Section 3-305(2) of the Act)

2) Upon acceptance of a plan of correction by the Department, assessment of the penalty shall be suspended by the Department. No additional penalty shall be imposed for days during which the plan of correction is in effect.

d) When a facility fails to correct a level B violation within the time

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period specified in the plan of correction approved by the Department.

1) The facility shall be cited for a repeat violation.

2) The penalty to be assessed shall be computed in accordance with subsection (c)(1) of this Section. Days during which the plan of correction was in effect shall be included in the calculation of the penalty.

3) The facility shall also be issued a conditional license for a period of at least six months as provided in Section 330.260.

e) When a notice of violation is issued for a violation of Article II of the Act with regard to the rights of a particular resident of the facility, the Department shall order the facility to reimburse the residents for any injuries incurred or if the amount of the injuries is less than \$100, the Department shall order the facility to pay \$100 to the resident. (Section 3-305(6) of the Act)

(Source: Amended at 18 Ill. Reg. _____, effective January 14, 1994)

DEPARTMENT OF PUBLIC HEALTH
NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part:

Skilled Nursing and Intermediate Care Facilities Code

2) Code Citation:

77 Ill. Adm. Code 300

3) Section Numbers:Adopted Action:

Amendments
Amendments
Amendments
Amendments
Amendments

4) Statutory Authority:

Nursing Home Care Act
Ill. Rev. Stat. 1991, ch. 111 1/2, pars. 4151-101 et seq.
[210 ILCS 45]

5) Effective Date of Amendments:

January 14, 1994

6) Does this Rulemaking Contain an Automatic Repeal Date? Yes No X

If "yes," please specify date:

7) Does this Rulemaking Contain Any Incorporations By Reference? Yes No X8) Date Filed in Agency's Principal Office: January 14, 19949) Date Notice(s) of Proposal was Published in Illinois Register:

July 30, 1993 - 17 Ill. Reg. 12205

10) Has the Joint Committee on Administrative Rules issued a Statement of Objections to this/these Rules? Yes No X

DEPARTMENT OF PUBLIC HEALTH
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If "yes," please complete the following:

A) Statement of Objection: , Ill. Reg.

B) Agency Response: , Ill. Reg.

C) Date Agency Response Submitted for Approval to the Joint Committee:

11) Difference Between Proposal and Final Version:

The following changes were made in response to comments received during the first notice or public comment period:

1. In the Source Note, the entry for March 31, 1993 was deleted and entries were added for May 6, 1993, July 3, 1993, September 3, 1993, October 3, 1993, and January 1, 1994.
2. In Section 300.2860(h), the word "medicine" was changed to "medication."
3. Subpart headings were added in the text.
4. Statutory citations were corrected to cite both Ill. Rev. Stat. and ILCS.
5. The Table of Contents and Authority Note were updated to reflect recently adopted amendments.

The following changes were made in response to comments and suggestions of the Joint Committee on Administrative Rules:

1. In Section 300.120(g)(2), "less than" was added before "eighteen," and in subsection (g)(3), "Nineteen (19)" was replaced with "Eighteen (18)".
2. A citation, which appears in the rules currently on file, was added at the end of Section 300.160.
3. In Section 300.2860(f)(5), the word "each," which appears in the rules currently on file, was added after "shower for" in line 1.

In addition, various typographical, grammatical and form changes were made in response to the comments from the Administrative Code Division and the Joint Committee on Administrative Rules.

12) Have all the changes agreed upon by the Agency and the Joint Committee been made as indicated

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in the agreement letter issued by the Joint Committee?

The Department has made all the changes to which it agreed with the Joint Committee.

13) Will the Rules Replace an Emergency Rule Currently in Effect?

Yes _____ No X

14) Are there any other Amendments Pending on this Part?

Yes _____ No X

If Yes:

<u>Section Numbers</u>	<u>Proposed Action</u>	<u>Ill. Reg. Citation</u>
_____	_____	_____

15) Summary and Purpose of Rules:

The rules in Part 300 govern the licensure of skilled nursing and intermediate care facilities. These amendments include changes necessitated by recently enacted legislation.

Section 300.120 - The rules are being amended in response to P.A. 87-1102 (H.B. 3796, effective January 1, 1993), which amended Sections 3-103, 3-110, 3-212, 3-215, and 3-805 of the Nursing Home Care Act to provide for the issuance of two-year licenses. The two-year license includes a \$400 application fee and will be issued to facilities that meet the criteria set forth in Section 3-110 of the Act. The criteria are based on the facility's performance record for the past 24 months. The amendments to Section 300.120 include the addition of new statutory language and provisions for prorating fees for facilities that receive two-year licenses.

Section 300.140 - This Section is also being amended in response to P.A. 87-1102 to state that the licensee shall qualify for issuance of a two-year license if the licensee has met the criteria contained in Section 3-110(b) of the Act for the last twenty-four consecutive months.

Section 300.150 - This Section is also being amended to reference the criteria for two-year licensure set forth in Section 3-110(b) of the Act.

Section 300.160 - Also in response to P.A. 87-1102, this Section is being amended to reflect a change in statutory language that deleted reference to a one-year renewal period.

Section 300.282 - This Section is being amended in response to P.A. 87-1056 (S.B. 1965, effective September 11, 1992), which amended the Nursing Home Care Act to permit the Department to assess a fine of not less than \$10,000 when death, serious mental or physical harm,

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permanent disability, or disfigurement results from a situation in which an "A" violation is issued. The amendments include correction of existing statutory language; addition of new statutory language concerning the assessment of fines; and reference to the criteria set forth in Section 300.286(a) of the rules, which are used by the Department to determine the amount of the fine.

Section 300.2860 - The amendment to this Section corrects an inaccurate cross-reference in subsection (g)(3). The rule currently references Section 300.2930, which concerns plumbing systems and would require facilities to have a 3-compartment sink with one bowl of 14 inches or deeper in the soiled utility room. Such sinks may cost \$3000 and are unnecessary in a soiled utility room, where a standard-sized three-compartment sink would be sufficient. The reference will be changed to Section 300.2430, which concerns sterilization of equipment and supplies. In addition, the Department has made some grammatical and format changes in Section 300.2862.

16) Information and Questions regarding this Adopted Rulemaking shall be directed to:

Ms. Gail DeVito, Division of Governmental Affairs, Department of Public Health, 535 West Jefferson, Fifth Floor, Springfield, Illinois 62761, 217/782-6187.

The full text of the Adopted Amendments begins on the next page:

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TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER c: LONG-TERM CARE FACILITIES

PART 300

SKILLED NURSING AND INTERMEDIATE CARE FACILITIES CODE

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300.120	Application for License
300.130	Licensee
300.140	Issuance of an Initial License for a New Facility
300.150	Issuance of an Initial License Due to a Change of Ownership
300.160	Issuance of a Renewal License
300.165	Criteria for Adverse License Actions
300.170	Denial of Initial License
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300.271	Presentation of Findings
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300.284	Calculation of Penalties
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Administrator

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SUBPART N: DESIGN AND CONSTRUCTION STANDARDS
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APPENDIX A

Interpretation, Components, and Illustrative Services for Intermediate Care Facilities and Skilled Nursing Facilities

APPENDIX B

Classification of Distinct Part of a Facility for Different Levels of Service (Repealed)

APPENDIX C

Federal Requirements Regarding Patients'/Residents' Rights

APPENDIX D

Forms for Day Care in Long-Term Care Facilities

APPENDIX E

Criteria for Activity Directors Who Need Only Minimal Consultation

TABLE A

Sound Transmission Limitations in New Skilled Nursing and Intermediate Care Facilities

TABLE B

Pressure Relationships and Ventilation Rates of Certain Areas for New Intermediate Care Facilities and Skilled Nursing Facilities

TABLE C

Construction Types and Sprinkler Requirements for Existing Skilled Nursing Facilities/Intermediate Care Facilities

TABLE D

Disaster Preparedness Parameters - Relative Humidity and Temperature

AUTHORITY: Implementing and authorized by the Nursing Home Care Act (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 4151-101 et seq.) [210 ILCS 45].

SOURCE: Emergency rules adopted at 4 Ill. Reg. 10, p. 1066, effective March 1, 1980, for a maximum of 150 days; adopted at 4 Ill. Reg. 30, p. 311, effective July 28, 1980; emergency amendment at 6 Ill. Reg. 3229, effective March 8, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 5981, effective May 3, 1982; amended at 6 Ill. Reg. 6454, effective May 14, 1982; amended at 6 Ill. Reg. 8198, effective June 29, 1982; amended at 6 Ill. Reg. 11631, effective September 14, 1982; amended at 6 Ill. Reg. 14550 and 14554, effective November 8, 1982; amended at 6 Ill. Reg. 14684, effective November 15, 1982; amended at 7 Ill. Reg. 285, effective December 22, 1982; amended at 7 Ill. Reg. 1972, effective January 28, 1983; amended at 7 Ill. Reg. 8579, effective July 11, 1983; amended at 7 Ill. Reg. 15831, effective November 10, 1983; amended at 7 Ill. Reg. 15864, effective November 15, 1983; amended at 7 Ill. Reg. 16992, effective December 14, 1983; amended at 8 Ill. Reg. 15599, 15603, and 15606, effective August 15, 1984; amended at 8 Ill. Reg. 15947, effective August 17, 1984; amended at 8 Ill. Reg. 16999, effective September 5, 1984; codified at 8 Ill. Reg. 19766; amended at 8 Ill. Reg. 24186, effective November 29, 1984; amended at 8 Ill. Reg. 24668, effective December 7, 1984; amended at 8 Ill. Reg. 25102, effective December 14, 1984; amended at 9 Ill. Reg. 132, effective December 26, 1984; amended at 9 Ill. Reg. 4087, effective March 15, 1985; amended at 9 Ill. Reg. 11049, effective July 1, 1985; amended at 11 Ill. Reg. 16927, effective October 1, 1987; amended at 12 Ill. Reg. 1052, effective December 24, 1987; amended at 12 Ill. Reg. 16811, effective October 1, 1988; emergency amendment at 12 Ill. Reg. 18477, effective October 24, 1988, for a maximum of 150 days; emergency expired March 23, 1989; amended at 13 Ill. Reg. 4684, effective March 24, 1989; amended at 13 Ill. Reg. 5134, effective April 1, 1989; amended at 13 Ill. Reg. 20089, effective December 1, 1989; amended at 14 Ill. Reg. 14950, effective October 1, 1990; amended at 15 Ill. Reg. 554, effective January 1, 1991; amended at 16 Ill. Reg. 681, effective January 1, 1992; amended at 16 Ill. Reg. 5977, effective March 27, 1992; amended at 16

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Ill. Reg. 17089, effective November 3, 1992; emergency amendment at 17 Ill. Reg. 2420, effective February 3, 1993, for a maximum of 150 days; emergency expired on July 3, 1993; emergency amendment at 17 Ill. Reg. 8026, effective May 6, 1993, for a maximum of 150 days; emergency expired on October 3, 1993; amended at 17 Ill. Reg. 13106, effective September 3, 1993; amended at 17 Ill. Reg. 16194, effective January 1, 1994; amended at 17 Ill. Reg. 19279, effective October 26, 1993; amended at 17 Ill. Reg. 19604, effective November 4, 1993; amended at 17 Ill. Reg. 21058, effective November 20, 1993; amended at 18 Ill. Reg. _____, effective January 14, 1994.

SUBPART A: GENERAL PROVISIONS

Section 300.120 Application for License

- a) Any person acting individually or jointly with other persons who proposes to build, own, establish, or operate an intermediate care facility or skilled nursing facility shall submit application information on forms provided by the Department. The Department shall be furnished a written description of the proposed program to be provided, and other such information as it may require in order to determine the appropriate level of care for which the facility should be licensed. Application forms and other required information shall be submitted and approved prior to surveys of the physical plant or review of building plans and specifications.
- b) An application for a new facility shall be accompanied by a permit as required by the Illinois Health Facilities Planning Act (Ill. Rev. Stat. 1989 1991, ch. 111 1/2, par. 1151 et seq.) [20 ILCS 3960].
- c) Application for a license to establish or operate an intermediate care facility, or skilled nursing facility shall be made in writing and submitted, with other such information as the Department may require, on forms provided by the Department. (Section 3-103(1) of the Act)
- d) All applications, except those of homes for the aged, shall be accompanied by an application fee of ~~200-dollars~~ \$200 for an annual license and \$400 for a 2 year license. The application shall be under oath and the submission of false or misleading information shall be a Class A misdemeanor. The application shall contain the following information:
 - 1) The name and address of the applicant if an individual, and if a firm, partnership, or association, of every member thereof, and in the case of a corporation, the name and address thereof and of its officers and its registered agent, and in the case of a unit of local government, the name and address of its chief executive officer;
 - 2) The name and location of the facility for which a license is sought;
 - 3) The name of the person or persons under whose management or supervision the facility will be conducted;
 - 4) The number and type of residents for which maintenance, personal care, or nursing is to be provided; and

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- 5) Such information relating to the number, experience, and training of the employees of the facility, any management agreements for the operation of the facility, and of the moral character of the applicant and employees as the Department may deem necessary. (Section 3-103(2) of the Act)
 - e) Ownership Change or Discontinuation
 - 1) The license is not transferable. It is issued to a specific licensee and for a specific location. The license and the valid current renewal certificate immediately become void and shall be returned to the Department when the facility is sold, or leased; or when operation is discontinued; or when operation is moved to a new location; or when the licensee (if an individual) dies; or when the licensee (if a corporation or partnership) dissolves or terminates; or when the licensee (whatever the entity) ceases to be.
 - 2) A license issued to a corporation shall become null, void and of no further effect upon the dissolution of the corporation. The license shall not be revived if the corporation is subsequently reinstated. A new license must be obtained in such cases.
 - f) Each initial application shall be accompanied by a financial statement setting forth the financial condition of the applicant and by a statement from the unit of local government having zoning jurisdiction over the facility's location stating that the location of the facility is not in violation of a zoning ordinance. An initial application for a new facility shall be accompanied by a permit as required by the Illinois Health Facilities Planning Act. After the application is approved, the applicant shall advise the Department every six months of any changes in the information originally provided in the application. (Section 3-103(3) of the Act)
 - g) The Department may issue licenses or renewals for periods of not less than six (6) months nor more than eighteen (18) months for facilities with annual licenses and not less than 18 months nor more than 30 months for facilities with 2-year licenses in order for the Department to distribute the expiration dates of all such licenses throughout the calendar year. The fees for these such licenses are shall be pro-rated on the basis of the portion of the year for which they are issued. (Section 3-110 of the Act) The pro-rated fees will be as follows:
 - 1) Six (6) months to less than twelve (12) months - \$150.00;
 - 2) Twelve (12) months to less than eighteen (18) months - \$200.00;
 - 3) Eighteen (18) months to less than twenty-four (24) months - \$350.00;
 - 4) Twenty-four (24) months to thirty (30) months - \$400.00.
- (Source: Amended at 18 Ill. Reg. _____, effective January 14, 1994.)

Section 300.140 Issuance of an Initial License for a New Facility

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a) Upon receipt and review of an application for a license and inspection of the applicant facility, the Director shall issue a probationary license if he finds:

- 1) The applicant is a person responsible and suitable to operate or to direct or participate in the operation of a facility by virtue of financial capacity, appropriate business or professional experience, a record of compliance with lawful orders of the Department and lack of revocation of a license during the previous five years;
- 2) The facility is under the supervision of an administrator who is licensed under the Nursing Home Administrators Licensing and Disciplinary Act (Ill. Rev. Stat. 1991, ch. 111, par. 3651 et seq.) [225 ILCS 70]; and
- 3) The facility is in substantial compliance with the Act and this Part. (Section 3-109 of the Act)

b) The Department will issue a probationary license for 120 days from the date of issuance.

c) Within 30 days prior to the termination of a probationary license, the Department shall fully and completely inspect the facility and, if the facility meets the applicable requirements for licensure, shall issue a license under Section 3-109 of the Act. (Section 3-116 of the Act) If the facility is not in compliance and satisfactory progress toward compliance is not being made, the Department will allow the probationary license to expire.

d) If the Department finds that the facility does not meet the requirements for licensure but has made substantial progress toward meeting those requirements, the license may be renewed once for a period not to exceed 120 days from the expiration date of the initial probationary license. (Section 3-116 of the Act) Under no condition may more than two successive probationary licenses be issued.

e) ~~Prior-to-actual--receipt-by-the-operator-of-the-license-certificater the-operator-may-begin-operation-upon--receipt--of--approval--by--the Department.~~ The licensee shall qualify for issuance of a two-year license if the licensee has met the criteria contained in Section 3-110(b) of the Act for the last twenty-four consecutive months.

(Source: Amended at 18 Ill. Reg. _____, effective January 14, 1994.)

Section 300.150 Issuance of an Initial License Due to a Change of Ownership

a) Upon receipt and review of an application for a license the Director shall issue a probationary license if he finds:

- 1) The applicant is a person responsible and suitable to operate or to direct or to participate in the operation of a facility by virtue of financial capacity, appropriate business or professional experience, a record of compliance with lawful orders of the Department and lack of revocation of a license during the previous five years;

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2) The facility is under the supervision of an administrator who is licensed under the Nursing Home Administrators Licensing and Disciplinary Act; and

3) The facility is in substantial compliance with the Act and this Part. (Section 3-109 of the Act)

b) Whenever ownership of a facility is transferred from the person named in a license to any other person, the transferee must obtain a new probationary license. The transferee shall notify the Department of the transfer and apply for a new license at least 30 days prior to final transfer. (Section 3-112 of the Act)

c) The transferor shall notify the Department at least 30 days prior to final transfer. The transferor shall remain responsible for the operation of the facility until such time as the license is issued to the new transferee. (Section 3-112 of the Act)

d) The license granted to the transferee shall be subject to any plan of correction submitted by the previous owner and approved by the Department and any conditions contained in a conditional license issued to the previous owner. If there are outstanding violations and no plan of correction has been submitted by the facility and approved by the Department, the Department may issue a conditional license and the plan of correction as provided in Sections 3-311 through 3-317 of the Act in place of a probationary license. (Section 3-113 of the Act)

e) The transferor shall remain liable for all penalties assessed against the facility which are imposed for violations occurring prior to transfer of ownership. (Section 3-114 of the Act)

f) The Department will issue a probationary license for 120 days from the date of issuance.

g) Within 30 days prior to the termination of a probationary license, the Department shall fully and completely inspect the facility and, if the facility meets the applicable requirements for licensure, shall issue a license under Section 3-109 of the Act. (Section 3-116 of the Act) If the facility is not in compliance and satisfactory progress toward compliance is not being made, the Department will allow the probationary license to expire.

h) If the Department finds that the facility does not meet the requirements for licensure but has made substantial progress toward meeting those requirements, the license may be renewed once for a period not to exceed 120 days from the expiration date of the initial probationary license. (Section 3-116 of the Act) Under no condition may more than two successive probationary licenses be issued.

i) The issuance date of the probationary license to the new owner will be the date the last licensure requirement is met as determined by the Department. ~~--Prior-to-actual--receipt-by-the-operator-of-the-license-certificater the-operator-may-begin-operation-upon--receipt--of--approval by-the-Department.~~

j) The licensee shall qualify for issuance of a two-year license if the licensee has met the criteria contained in Section 3-110(b) of the Act for the last twenty-four consecutive months.

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(Source: Amended at 18 Ill. Reg. _____, effective January 14, 1994.)

Section 300.160 Issuance of a Renewal License

At least 120 days, but not more than 150 days, prior to license expiration, the licensee shall submit an application for renewal of the license in such form and containing such information as the Department requires. If the application is approved, and the facility is in compliance with all other licensure requirements, the license shall be renewed ~~for an additional one-year period~~. (Section 3-115 of the Act)

(Source: Amended at 18 Ill. Reg. _____, effective January 14, 1994.)

Section 300.282 Conditions for Assessment of Penalties

The Department shall consider the assessment of a monetary penalty against a facility under the following conditions:

- a) When a notice of violation for a level A violation is issued.
 - 1) The penalty to be assessed for this violation shall be the greater of the following:

- A) An amount not less than \$5000 as determined by the Director or his designee considering the factors outlined in Section 300.286(a), or
- B) The total of the following:

- i) \$5 per resident in the facility, plus
- ii) \$.20 per resident for each day of the violation, commencing on the day on which the notice of violation is served under Section 3-301 of the Act and ending on the date the violation is corrected ~~received-by-the facility-and-ending-on-the-day--the--necessary corrective-action-is-completed--(Section-3-305(1)-of-the-Act), or~~

- C) When death, serious mental or physical harm, permanent disability, or disfigurement results, a fine of not less than \$10,000 as determined by the Director or his designee considering the factors outlined in Section 300.286(a). (Section 3-305(1) of the Act)

- 2) The facility shall also be issued a conditional license for a period of six months as provided in Section 300.260.

- b) When a facility fails to abate or eliminate a level A violation immediately or within the period set by the Department in the notice of violation pursuant to Section 300.276(a)(4)(A).

- 1) The facility shall be cited for a repeat violation.

- 2) The penalty to be assessed shall be three times the penalty computed under subsection (a)(1) of this Section.

- 3) The license of the facility shall be revoked as provided in Section 300.180.

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- c) When a notice of violation for a level B violation is issued.
 - 1) The penalty to be assessed for this violation shall be the greater of the following:

- A) An amount not less than \$500 as determined by the Director or his designee considering the factors outlined in Section 300.286(a), or

- B) The total of the following:

- i) \$3 per resident in the facility, plus
- ii) \$.15 per resident for each day of the violation, commencing on the day date ~~on-which-the~~ a notice of violation is served under Section 3-301 of the Act and ending on the date the violation is corrected ~~received-by-the-facility-and-ending-on-the-day--the--necessary corrective-action-is-completed~~. (Section 3-305(2) of the Act)

- 2) Upon acceptance of a plan of correction by the Department, assessment of the penalty shall be suspended by the Department. No additional penalty shall be imposed for days during which the plan of correction is in effect.

- d) When a facility fails to correct a level B violation within the time period specified in the plan of correction approved by the Department.
 - 1) The facility shall be cited for a repeat violation.

- 2) The penalty to be assessed shall be computed in accordance with subsection (c)(1) of this Section. Days during which the plan of correction was in effect shall be included in the calculation of the penalty.

- 3) The facility shall also be issued a conditional license for a period of at least six months as provided in Section 300.260.

- e) When a notice of violation is issued for a violation of Article II of the Act with regard to the rights of a particular resident of the facility, the Department shall order the facility to reimburse the residents for any injuries incurred or if the amount of the injuries is less than \$100, the Department shall order the facility to pay \$100 to the resident. (Section 3-305(7) of the Act)

(Source: Amended at 18 Ill. Reg. _____, effective January 14, 1994.)

SUBPART N: DESIGN AND CONSTRUCTION STANDARDS
FOR NEW INTERMEDIATE CARE AND SKILLED NURSING FACILITIES

Section 300.286 Nursing Unit

- a) The number of resident beds in a nursing unit shall not exceed 75 beds.

- 1) Not less than 60 percent of the resident beds shall be in one or two bed rooms.

- 2) Not less than three percent of the total number of the beds in the facility shall be located in single bed rooms with a private

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- b) bath, water closet and lavatory.
- b) General Requirements for Bedrooms
- 1) Resident bedrooms shall have an entrance directly off a corridor with an entrance door which swings into the room.
 - 2) Resident bedrooms shall have adequate and satisfactory artificial light and be equipped in accordance with Section 300.2940(a)(2) and (e)(1).
 - 3) Residents shall have access to a toilet room without entering the general corridor area.
 - 4) The facility shall provide a closet or wardrobe of at least four square feet for each resident.
 - 5) Residents-Resident bedroom floor floors shall be at or above grade level.
 - 6) Each room used as a resident bedroom shall have at least one outside window, and a total window area to the outside equal to at least one-tenth the floor area of the room.
 - 7) A Nurses' nurses' call system shall be provided in accordance with Section 300.2940(g). (B)-
 - 8) Complete visual privacy shall be provided for each resident in multibed rooms. Design for privacy shall not restrict resident access to the entry, lavatory, nor toilet.
 - 9) No resident bedroom shall be located more than 120 feet from the nurses' station, clean utility room, and soiled utility room.
- c) Resident Bedrooms
- 1) Single resident bedrooms shall contain at least 100 square feet. Multiple resident bedrooms shall contain at least 80 square feet per bed. Minimum usable floor area shall be exclusive of toilet rooms, closets, lockers, wardrobes, alcoves, vestibules, or clearly definable entryways.
 - 2) Multiple resident bedrooms shall not have more than four beds nor more than three beds deep from an outside wall. All beds shall have a minimum clearance of three feet at the foot and sides of the bed.
- d) Special Care Room
- 1) The facility shall provide provide a special care room for each nursing unit.
 - 2) Provide this This room shall be provided with a private toilet room containing water closet, lavatory, bathtub or shower and all other necessary facilities to meet the resident's needs. (B)
 - 3) This room shall be located to allow direct visual supervision from the nurses' station.
 - 4) This room shall be included in the authorized maximum bed capacity for the facility.
 - 5) It is permissible for the room to be occupied by a resident, not in need of special care, provided the resident is clearly informed and understands they he or she will be immediately transferred out of the room any time of day or night, whenever the room is needed to care for a resident requiring special care.
- e) Nurses' Station (B)

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- 1) The facility shall provide provide a minimum of one nursing station per unit with direct access to the corridor for each nursing unit. The location of this station shall allow visual control without the use of mirrors of each resident sleeping corridor. Separation shall be provided from the utility rooms.
 - 2) One or more nursing units may be combined at a central nursing station if sufficient space is provided for all nursing functions.
 - 3) A lounge with toilet room shall be provided near each station for nursing staff. Lockers for safekeeping of coats and personal effects may be provided within this space or in a convenient central location.
- f) Bath and Toilet Rooms
- 1) The resident bedroom toilet room shall serve no more than two resident rooms nor more than eight beds. The toilet room shall contain a water closet and a lavatory. The lavatory may be omitted from the toilet room when the resident room contains a lavatory.
 - 2) The facility shall provide provide one wheelchair resident toilet room for each sex residing in a nursing unit. The room shall be accessible from the corridor. This room shall contain a water closet and lavatory.
 - 3) Wheelchair resident toilet room rooms are not required when all resident toilet rooms can accommodate wheelchair residents.
 - 4) The facility shall provide provide one training toilet room on each nursing floor, that which is accessible from the corridor. provide-three-foot Three-foot clearance at the front and both sides of the water closet shall be provided. This room shall contain a lavatory accessible for wheelchair use.
 - 5) The facility shall provide provide one bathtub or shower for each ten resident beds per nursing unit which are not served by bathing or showering facilities in resident room rooms.
 - 6) All shower stalls for residents not needing assistance shall be at least three feet square and shall have no curb.
 - 7) The facility shall provide provide at least one bathtub for assisted bathing per nursing unit. There shall be a clear area at least three feet wide at both sides and one end of the tub.
 - 8) The facility shall provide provide at least one shower stall for assisted showering per nursing unit. The shower stall shall be at least four feet square with no curb.
 - 9) The facility shall provide provide a toilet room with a water closet and lavatory, accessible to the assisted bathtub and shower without entering the general corridor. This room may be arranged to serve as the training toilet facility.
 - 10) Grouped bathing and toilet facilities shall be partitioned or curtained for privacy.
- g) Utility Rooms
- 1) The clean etean utility room shall have direct access to a corridor or access may be through the nurses' station entrance.

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This room shall contain work counters, single or double compartment sink with integral drainboard, storage cabinets, and an autoclave. (Autoclave may be waived in lieu of other methods if sterilization is approved by Department.)

- 2) A clean ~~clean~~ linen storage room or closet within the clean utility room shall be provided. If a closed cart system is used, storage may be in an alcove.
- 3) The soiled ~~soiled~~ utility room shall have direct access to a corridor. This room shall contain work counters, storage cabinets, and a clinical rim flush sink. The room shall also contain a three compartment sink with integral drainboard if chemical sanitizing procedures are used, or a double compartment sink with integral drainboard if a utensil sanitizer is used (See Section ~~300-2330~~ 300.2430).
- 4) The charging room for a linen chute shall be large enough to unload the collecting cart with the door closed.

h) Medication Facilities

1) A Medication ~~Medication~~ station shall be provided for convenient and prompt 24 hour distribution of medicine to residents. The medicine preparation room shall be under the nursing staff's visual control and contain a work counter, refrigerator, and locked storage for biologicals and drugs. A sink ~~Provision~~ for handwashing and preparation of medication purposes shall be provided in the medication preparation room.

2) If medicine dispensing carts are used, a specific storage space for the cart shall be provided, which may be located in the nurses' station or in an alcove or other space under the direct control of the nursing staff. A sink ~~Provision~~ for handwashing and preparation of medication purposes shall be provided in the nurses' station.

i) A Nourishment ~~Nourishment~~ station shall be provided with a handwashing sink and equipment including refrigerator, and storage cabinets for serving nourishment between scheduled meals. Ice for residents' use shall be provided only by icemaker dispenser units.

j) A Room ~~Room~~ for examination and treatment of residents shall be provided and shall have a minimum floor area of 100 square feet, excluding space for vestibule, closets and work counters (whether fixed or movable). The minimum room dimension shall be ten feet. The room shall contain a lavatory or sink equipped for handwashing; a work counter; storage facilities; and a desk, counter, or shelf space for writing.

k) An Equipment ~~Equipment~~ storage room shall be provided for storage of equipment such as I.V. stands, inhalators, air mattresses, walkers, and wheelchairs.

l) Parking space for wheelchairs shall be provided and located out of path of normal traffic.

(Source: Amended at 18 Ill. Reg. _____, effective January 14, 1994.)

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- | | | |
|----|-----------------------------|------------------------|
| 1) | <u>Heading of the Part:</u> | Income Tax |
| 2) | <u>Code Citation:</u> | 86 Ill. Adm. Code 100 |
| 3) | <u>Section Numbers:</u> | <u>Adopted Action:</u> |
| | 100.5020 | Amendment |
| | 100.5140 | Amendment |
| | 100.5230 | Amendment |
| | 100.5250 | Amendment |
| | 100.7095 | Amendment |
| | 100.7310 | Amendment |
| | 100.9000 | Amendment |
| | 100.9100 | Amendment |
| | 100.9400 | Amendment |
| | 100.9420 | Amendment |

4) Statutory Authority: The Illinois Income Tax Act [35 ILCS 5] and the Uniform Penalty and Interest Act [35 ILCS 735]

5) Effective Date of Amendment(s): January 13, 1994

6) Does this rulemaking contain an automatic repeal date? No

7) Does this amendment contain incorporations by reference? No

8) Date Filed in Agency's Principal Office: January 13, 1994

9) Notice of Proposal Published in Illinois Register:

September 24, 1993, Issue 39, 17 Ill. Reg. 15471

10) Has ICAR issued a Statement of Objections to these Amendments? No

11) Differences between proposal and final version: In response to a suggestion from the Index Division of the Secretary of State, Section 100.5250(a) was amended to correct the cross-reference from "Sections 100.6000 through 100.6080" to "Sections 100.5200 through 100.5280."

12) Have all the changes agreed upon by the agency and ICAR been made as indicated in the agreement letter issued by ICAR? No agreement letter was issued by ICAR.

13) Will this amendment replace an emergency amendment currently in effect? No

14) Are there any amendments pending on this Part? yes

Section Numbers Proposed Action IL Register Citation

ILLINOIS REGISTER
DEPARTMENT OF REVENUE
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100.3350 17 Ill. Reg. 17861
100.2470 17 Ill. Reg. 21163
Amendment
New Section

Summary and Purpose of Amendment(s): This rulemaking amends the Department's rules concerning the Illinois Income Tax Act to include references to the Uniform Penalty and Interest Act. The Uniform Penalty and Interest Act is effective January 1, 1994. In a separate rulemaking, the Department has proposed a new Part (86 Ill. Adm. Code 700) that provides detailed rules on the new Uniform Penalty and Interest Act. These amendments to the Income Tax rules cross-reference the new Act and the new rules as appropriate.

16) Information and questions regarding this adopted amendment shall be directed to:

Keith W. Staats
Associate Counsel
Office of General Counsel
Illinois Department of Revenue
101 West Jefferson
Springfield, Illinois 62794
Phone: (217) 782-7054

The full text of the Adopted Amendment begins on the next page:

ILLINOIS REGISTER
DEPARTMENT OF REVENUE
NOTICE OF ADOPTED AMENDMENT(S)

TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE
PART 100
INCOME TAX

SUBPART A: TAX IMPOSED

Section
100.2000 Introduction
100.2050 Net Income (IITA Section 202)

SUBPART B: CREDITS

Section
100.2100 Investment Credit

SUBPART C: NET OPERATING LOSSES OF UNITARY BUSINESS GROUPS
OCCURRING PRIOR TO DECEMBER 31, 1986

Section
100.2200 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group (IITA Section 202) - Scope
100.2210 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group: (IITA Section 202) - Definitions
100.2220 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group: (IITA Section 202) - Current Net Operating Losses: Offsets Between Members
100.2230 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group: (IITA Section 202) - Carrybacks and Carryforwards
100.2240 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group: (IITA Section 202) - Effect of Combined Net Operating Loss in Computing Illinois Base Income
100.2250 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group: (IITA Section 202) - Deadline for Filing Claims Based on Net Operating Losses Carried Back From a Combined Apportionment Year

SUBPART D: ILLINOIS NET LOSS DEDUCTIONS OCCURRING ON OR AFTER
DECEMBER 31, 1986

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Section
100.2300 Illinois Net Loss Deductions for Losses Occurring On' or After December 31, 1986
100.2310 Computation of the Illinois Net Loss Deduction
100.2320 Determination of the Amount of Illinois Net Loss
100.2330 Illinois Net Loss Carrybacks and Net Loss Carryovers
100.2340 Illinois Net Loss Deductions of Corporations That are Members of a Unitary Business Group: Separate Unitary Versus Combined Unitary Returns
100.2350 Illinois Net Loss Deductions of Corporations that are Members of a Unitary Business Group: Changes in Membership

SUBPART G: BASE INCOME OF TRUSTS AND ESTATES

Section
100.2680 Capital Gain Income of Estates and Trusts Paid to or Permanently Set Aside for Charity

SUBPART I: GENERAL RULES OF ALLOCATION AND APPORTIONMENT OF BASE INCOME

Section
100.3000 Terms Used in Article 3 (IITA Section 301)
100.3010 Business and Nonbusiness Income (IITA Section 301)
100.3020 Resident (IITA Section 301)

SUBPART J: COMPENSATION PAID TO NONRESIDENTS

Section
100.3100 Compensation (IITA Section 302)
100.3110 State (IITA Section 302)
100.3120 Allocation of Compensation Paid to Non-Residents (IITA Section 302)

SUBPART K: NON-BUSINESS INCOME OF PERSONS OTHER THAN RESIDENTS

Section
100.3200 Taxability in Other State (IITA Section 303)
100.3210 Commercial Domicile (IITA Section 303)
100.3220 Allocation of Certain Items of Nonbusiness Income by Persons Other than Residents (IITA Section 303)

SUBPART L: BUSINESS INCOME OF PERSONS OTHER THAN RESIDENTS

Section
100.5200 Election to File a Combined Return
100.5210 Procedure for Making the Election
100.5220 Designated Agent for the Members
100.5230 Combined Estimated Tax Payments

100.3300 Allocation and Apportionment of Base Income (IITA Section 304)
100.3310 Business Income of Persons Other than Residents (IITA Section 304) - In General
100.3320 Business Income of Persons Other Than Residents (IITA Section 304) - Apportionment
100.3330 Business Income of Persons Other Than Residents (IITA Section 304) - Allocation
100.3340 Business Income of Persons Other Than Residents (IITA Section 304) - Property Factor (IITA Section 304)
100.3350 Payroll Factor (IITA Section 304)
100.3360 Sales Factor (IITA Section 304)
100.3370 Special Rules (IITA Section 304)
100.3380 Petitions for Alternative Allocation or Apportionment (IITA Section 304(f))
100.3390 Allocation of Compensation Paid to Nonresidents (IITA Section 302)

SUBPART N: TIME AND PLACE FOR FILING RETURNS

Section
100.5000 Time for Filing Returns: Individuals (IITA Section 505)
100.5010 Place for Filing Returns: All Taxpayers (IITA Section 505)
100.5020 Extensions of Time for Filing Returns: All Taxpayers (IITA Section 505)
100.5030 Taxpayer's Notification to the Department of Certain Federal Changes Arising in Federal Consolidated Return years, and Arising in Certain Loss Carryback Years (IITA Section 506)

SUBPART O: COMPOSITE RETURNS

Section
100.5100 Composite Returns: Eligibility
100.5110 Composite Returns: Responsibilities of Authorized Agent
100.5120 Composite Returns: Individual Liability
100.5130 Composite Returns: Required forms and computation of Income
100.5140 Composite Returns: Estimated Payments
100.5150 Composite Returns: Tax, Penalties and Interest
100.5160 Composite Returns: Credit for Resident Individuals
100.5170 Composite Returns: Definition of a "Lloyd's Plan of Operation"

SUBPART P: COMBINED RETURNS

Election to File a Combined Return
Procedure for Making the Election
Designated Agent for the Members
Combined Estimated Tax Payments

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100.5240 Claims for Credit of Overpayments
 100.5250 Liability for Combined Tax, Penalty and Interest
 100.5260 Combined Amended Returns
 100.5270 Computation of Combined Income and Tax
 100.5280 Definitions and Miscellaneous Provisions Relating to Combined Returns

SUBPART Q: REQUIREMENT AND AMOUNT OF WITHHOLDING

Section
 100.7000 Requirement of Withholding (IITA Section 701)
 100.7010 Compensation Paid in this State (IITA Section 701)
 100.7020 Transacting Business Within this State (IITA Section 701)
 100.7030 Payments to Residents (IITA Section 701)
 100.7040 Employer Registration (IITA Section 701)
 100.7050 Computation of Amount Withheld (IITA Section 701)
 100.7060 Additional Withholding (IITA Section 701)
 100.7070 Voluntary Withholding (IITA Section 701)
 100.7080 Correction of Underwithholding or Overwithholding (IITA Section 701)
 100.7090 Reciprocal Agreement (IITA Section 701)
 100.7095 Cross References

SUBPART R: AMOUNT EXEMPT FROM WITHHOLDING

Section
 100.7100 Withholding Exemption (IITA Section 702)
 100.7110 Withholding Exemption Certificate (IITA Section 702)
 100.7120 Exempt Withholding Under Reciprocal Agreements (IITA Section 702)

SUBPART S: INFORMATION STATEMENT

Section
 100.7200 Reports for Employee (IITA Section 703)

SUBPART T: EMPLOYER'S RETURN AND PAYMENT OF TAX WITHHELD

Section
 100.7300 Returns of Income Withheld from Wages (IITA Section 704)
 100.7310 Quarterly Returns Filed on an Annual Basis (IITA Section 704)
 100.7320 Time for Filing Returns (IITA Section 704)
 100.7330 Payment of Tax Deducted and Withheld (IITA Section 704)
 100.7340 Correction of Underwithholding or Overwithholding (IITA Section 704)

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SUBPART U: COLLECTION AUTHORITY

Section
 100.9000 General Income Tax Procedures (IITA Section 901)
 100.9010 Collection Authority (IITA Section 901)

SUBPART V: NOTICE AND DEMAND

Section
 100.9100 Notice and Demand (IITA Section 902)

SUBPART W: ASSESSMENT

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 100.9200 Assessment (IITA Section 903)
 100.9210 Waiver of Restrictions on Assessments (IITA Section 907)

SUBPART X: DEFICIENCIES AND OVERPAYMENTS

Section
 100.9300 Deficiencies and Overpayments (IITA Section 904)
 100.9310 Application of Tax Payments Within Unitary Business Groups (IITA Section 603)
 100.9320 Limitations on Notices of Deficiency (IITA Section 905)
 100.9330 Further Notices of Deficiency Restricted (IITA Section 906)

SUBPART Y: CREDITS AND REFUNDS

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 100.9400 Credits and Refunds (IITA Section 909)
 100.9410 Limitations on Claims for Refund (IITA Section 911)
 100.9420 Recovery of Erroneous Refund (IITA Section 912)

SUBPART Z: INVESTIGATIONS AND HEARINGS

Section
 100.9500 Access to Books and Records (IITA Section 913)
 100.9510 Taxpayer Representation and Practice Requirements
 100.9520 Conduct of Investigations and Hearings

SUBPART AA: JUDICIAL REVIEW

Section

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100.9600 Administrative Review Law (IITA Section 1201)

SUBPART BB: DEFINITIONS

Section 100.9700 Unitary Business Group Defined (IITA Section 1501)

SUBPART CC: LETTER RULING PROCEDURES

Section 100.9800 Letter Ruling Procedures

APPENDIX A Business Income Of Persons Other Than Residents

TABLE A Example of Unitary Business Apportionment

TABLE B Members Using Three-Factor and Single-Factor Formulas

AUTHORITY: Implementing the Illinois Income Tax Act (Ill. Rev. Stat. 1991, ch. 120, pars. 1-101 et seq. [35 ILCS 5/101 et seq.]) and authorized by Section 1401 of the Illinois Income Tax Act (Ill. Rev. Stat. 1991, ch. 120, par. 14-1401) [35 ILCS 5/1401].

SOURCE: Filed July 14, 1971, effective July 24, 1971; amended at 2 Ill. Reg. 49 p. 84, effective November 29, 1978; amended at 5 Ill. Reg. 813, effective January 7, 1981; amended at 5 Ill. Reg. 4617, effective April 14, 1981, amended at 5 Ill. Reg. 4642, effective April 14, 1981; amended at 5 Ill. Reg. 5537, effective May 7, 1981; amended at 5 Ill. Reg. 5705, effective May 20, 1981; amended at 5 Ill. Reg. 5883, effective May 20, 1981; amended at 5 Ill. Reg. 6843, effective June 16, 1981; amended at 5 Ill. Reg. 13244, effective November 13, 1981; amended at 5 Ill. Reg. 13724, effective November 30, 1981; amended at 6 Ill. Reg. 579, effective December 29, 1981; amended at 6 Ill. Reg. 9701, effective July 26, 1982; amended at 7 Ill. Reg. 399, effective December 28, 1982; codified at 8 Ill. Reg. 19574; amended at 9 Ill. Reg. 16986, effective October 21, 1985; amended at 9 Ill. Reg. 685, effective December 31, 1985; amended at 10 Ill. Reg. 7913, effective April 28, 1986; amended at 10 Ill. Reg. 19512, effective November 3, 1986; amended at 10 Ill. Reg. 21941, effective December 15, 1986; amended at 11 Ill. Reg. 831, effective December 24, 1986; amended at 11 Ill. Reg. 2450, effective January 20, 1987; amended at 11 Ill. Reg. 12410, effective July 8, 1987; amended at 11 Ill. Reg. 17782, effective October 16, 1987; amended at 12 Ill. Reg. 4865, effective February 25, 1988; amended at 12 Ill. Reg. 6748, effective March 25, 1988; amended at 12 Ill. Reg. 11766, effective July 1, 1988; amended at 12 Ill. Reg. 14307, effective August 29, 1988; amended at 13 Ill. Reg. 8917, effective May 30, 1989; amended at 13 Ill. Reg. 10952, effective June 26, 1989; amended at 14 Ill. Reg. 4558, effective March 8, 1990; amended at 14 Ill. Reg. 6810, effective April 19, 1990; amended at 14 Ill. Reg. 10082, effective June 7, 1990; amended at 14 Ill. Reg. 16012, effective September 17, 1990; emergency amendment at 17 Ill. Reg.

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473, effective December 22, 1992, for a maximum of 150 days; amended at 17 Ill. Reg. 8869, effective June 2, 1993; amended at 17 Ill. Reg. 13776, effective August 9, 1993; recodified at 17 Ill. Reg. 14189; amended at 17 Ill. Reg. 19632, effective November 1, 1993; amended at 17 Ill. Reg. 19966, effective November 9, 1993; amended at 18 Ill. Reg. _____, effective January 13, 1994.

Section 100.5020 Extensions of Time for Filing Returns: All Taxpayers (IITA Section 505)

- a) Tentative Payments. An extension of time to file a return permitted under this Section is not to be construed as an extension by the Department of the time for payment of tax due on such return.
- b) Automatic Illinois Extensions. The Department will grant an automatic extension of 6 months (7 months for corporations) to file any Illinois income tax return except Form IL-941. No application form need be filed by a taxpayer to obtain this extension. If a balance of tentative tax is due, the taxpayer should transmit the payment with the appropriate form (Form IL-505-I and Form IL-505-B) by the original filing due date in order to avoid the penalty for underpayment of tax (IITA Section 1005) and statutory interest (IITA Section 1003).
- c) Additional Extensions Beyond the Automatic Extension Period. The Department will approve an extension of more than 6 months (7 months for corporations) if an extension of more than 6 months is granted by the Internal Revenue Service. For corporations the additional Illinois extension will be one month beyond any approved federal extension of longer than 6 months. For all other taxpayers, the additional extension will be for the length of time approved by the Internal Revenue Service. All taxpayers must attach a copy of the approved federal extension to their return when it is filed.
- d) Penalty and Interest on Underpayment of Tax.
 - 1) IITA Section 1005 Penalty. A penalty of 6% per annum on any tax underpayment shall be assessed if the amount of tax required to be shown on a return is not paid on or before the date required for filing the return (determined without regard to any extension of time to file) for returns due prior to January 1, 1994. For returns due on and after January 1, 1994, the penalty shall be determined in the manner and at the rate prescribed by the Uniform Penalty and Interest Act [35 ILCS 735/31 ("the UPIA") and 86 Ill. Adm. Code 700]. However, (as specified in the Internal Revenue Code Regulations, 26 CFR 301.6651-1(c)(3)), no penalty will be assessed if the amount of the underpayment is 10% or less of the amount of tax required to be shown on the return and the taxpayer pays such amount due by the extended due date.
 - 2) IITA Section 1003 Interest. Interest at the rate of 9% per annum (or at such adjusted rate as is established under IRC Section

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6621(b)) will be assessed for the period from the due date of the return to the date of payment for any amount of tax not paid on or before the due date (determined without regard to any extension) for returns due before January 1, 1994. For returns due on and after January 1, 1994, the penalty shall be determined in the manner and at the rate prescribed by the Uniform Penalty and Interest Act [35 ILCS 735/3] ("the UPIA") and 86 Ill. Adm. Code 700.

e) Late Filing Penalty.

- 1) The Department will not assess IITA Section 1001 late filing penalty for the period of any extension provided by the IITA and this regulation.
- 2) For returns due prior to January 1, 1994, in case of failure to file any tax return required under this Act on the date prescribed therefor (determined with regard to any extensions of time for filing), unless it is shown that such failure is due to reasonable cause (as defined in Section 6651 of the Internal Revenue Code, 26 U.S.C. 6651) there shall be added as a penalty to the amount required to be shown as tax on such return 7.5% of the amount of such tax if the failure is not for more than one month, with an additional 7.5% for each additional month or fraction thereof during which such failure continues, not exceeding 37.5% in the aggregate. (Section 1001 of the IITA, effective until January 1, 1994).

- 3) For returns due on and after January 1, 1994, in case of failure to file any tax return required under this Act on the date prescribed therefor, (determined with regard to any extensions of time for filing) there shall be added as a penalty the amount prescribed by Section 3-3 of the Uniform Penalty and Interest Act. [Section 1001 of the IITA, effective January 1, 1994]

(Source: Amended at 18 Ill. Reg. _____, effective January 13, 1994)

Section 100.5140 Composite Returns: Estimated Payments

Estimated payments. Estimated payments shall be made on the basis of the tax shown on the composite return. Any penalty for underpayment of estimated tax (see Section 804 of the IITA and Section 3-3 of the UPIA) shall be determined on a composite basis. However, in no event shall such penalty be imposed for taxable years ending December 31, 1987.

(Source: Amended at 18 Ill. Reg. _____, effective January 13, 1994)

Section 100.5230 Combined Estimated Tax Payments

- a) In general. If a combined return is filed for two consecutive

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taxable years, payments of estimated tax must be made on a combined basis for each subsequent taxable year, until such time as the election is revoked and separate returns are properly filed. For the taxable years in which combined estimated payments are required, the group shall be treated as one taxpayer for purposes of IITA Section 803 of the Act (relating to payment of estimated tax). If separate returns are properly filed in a year after a combined return year, the amount of any estimated tax payments made on a combined basis for such year shall be credited against the separate tax liabilities of the former electing members in the manner allocated by the designated agent which is satisfactory to the Department. The manner of allocation will be satisfactory to the Department if it does not jeopardize the collection of any liability.

- b) First two combined return years. For the first two years for which a combined return is filed, payments of estimated tax may be made on either a combined or separate basis. The amount of any separate estimated tax payments made for such year shall be credited against the combined tax liability. The designated agent shall give notice, in the manner and form prescribed by the Department in the instructions to Illinois Schedule UB, of any estimated payments made on a separate basis for any such year.

- c) Penalty for underpayment of estimated tax.

- 1) In general. If a combined return is filed, the amount of any penalty for underpayment of estimated tax shall be computed as if the electing members were one taxpayer.

- 2) Penalty in the first combined return year. In the first combined return year, the exceptions under IITA Section 804(d)(1)-(3) shall be determined based on the aggregate of the tax and income shown on the returns filed for the previous year.

- 3) Combined payments made but separate returns filed for a tax year following a combined return year. If former electing members properly file separate returns for the taxable year, and if payments of estimated tax were made on a combined basis, the payments made shall be allocated in the manner provided by subsection (a). The exceptions under IITA Section 804(d)(1)-(3) shall be determined based on each former electing member's allocated share of tax and income from the combined return filed for the previous year. The allocated shares shall be reported to the Department by the designated agent in the manner prescribed in the instructions to Schedule UB.

- 4) Combined payments made but separate returns filed for a tax year not following a combined return year. If combined estimated payments are made for a tax year but no combined return is filed for that year and no combined return was filed in the previous year, the estimated tax shall be a credit only for the corporation that made the payment.

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d) Change in membership.

1) Entering. If an eligible corporation becomes a member of a group during a combined-return year, for purposes of computing the exceptions under IITA Section 804, such corporation's tax, net income and facts shown on its return for the preceding taxable year shall be included with the tax, net income and facts shown on the combined return for the preceding taxable year.

2) Leaving. If an electing corporation leaves the group during a combined-return year, for purposes of computing the exceptions under IITA Section 804 for such combined-return year, the tax, net income and facts for the preceding taxable year attributable to such corporation shall be separately identified by the designated agent as if the corporation was not a member of the group for the preceding taxable year. If the designated agent fails to make correct attributions, no exceptions to the Section 804 penalty shall apply.

e) Examples. The provisions of this Section may be illustrated by the following examples:

1) Example 1: Corporations P and S-1 file a combined return for the first time for calendar year 1985. P and S-1 also file combined returns for 1986 and 1987. For 1985 and 1986, P and S-1 may make payments of estimated tax on either a separate or combined basis. For 1987, however, the group must pay its estimated tax on a combined basis. In determining whether P and S-1 come within the exception provided in IITA Section 804(d)(1) for 1985, the "tax shown on the return" is the aggregate amount of tax shown on the separate returns of each member for 1984.

2) Example 2: Corporations X and Y filed combined returns for the calendar years 1985 and 1986 and separate returns for 1987. In determining whether X or Y comes within the exception provided in IITA Section 804(d)(2) for 1987, the "facts shown on the return" are the facts shown on the combined return for 1986 attributable to X and to Y by the designated agent.

3) Example 3: Assume the same facts as in example (1). Assume further that corporation S-2 becomes a member of the group on July 1, 1987, and joins in the filing of the combined return for 1987. In determining whether the group (which now includes S-2) comes within the exception provided in IITA Section 804(d)(1) for 1987, the "tax shown on the return" is the tax shown on the combined return for 1986 plus any tax of S-2 on its separate return for 1986.

4) Example 4: Assume the same facts as in example (1). Assume further that corporation S-2 is a member of the group during 1986, and joins in the filing of the combined return for such year, but ceases to be a member of the group on September

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15, 1987. In determining whether the group (which no longer includes S-2) comes within the exception provided in IITA Section 804(d)(1) for 1987, the "tax shown on the return" is the tax shown on the combined return for 1986 less the amount attributed to S-2 by the designated agent. Likewise, with regard to S-2's return, the "tax shown on the return" is the amount attributed to S-2 by the designated agent.

(Source: Amended at 18 Ill. Reg. _____, effective January 13, 1994)

Section 100.5250 Liability for Combined Tax, Penalty and Interest

a) Joint and several liability of electing members. The taxpayers making the election shall be jointly and severally liable for the combined tax, penalty and interest computed in accordance with these combined return regulations, Sections 100.5200 through 100.5280 of this Part, as well as the Uniform Penalty and Interest Act and rules adopted pursuant to the UPIA at 86 Ill. Adm. Code 700.

b) Effect of intercompany agreements. No agreement entered into by one or more members of the group with any other member of such group or with any other person shall in any case have the effect of reducing the liability prescribed under this Section.

c) Penalties. If a penalty is imposed under the IITA and the UPIA with respect to a combined return, the amount shall be based on the combined tax liability or deficiency for the combined return year.

d) Interest. If interest is imposed under the IITA, at the rate determined under the UPIA, with respect to a combined return, the amount shall be based on the combined tax liability or deficiency for the combined return year.

(Source: Amended at 18 Ill. Reg. _____, effective January 13, 1994)

Section 100.7095 Cross References

See IITA Sections 1002(c) and 1002(d), the UPIA and 86 Ill. Adm. Code 700 for penalties relating to the failure to deduct and withhold a tax as required by IITA Section 701. See 86 Ill. Adm. Code 100.7120 for provisions relating to claiming exemption from withholding pursuant to a reciprocal agreement.

(Source: Amended at 18 Ill. Reg. _____, effective January 13, 1994)

Section 100.7310 Quarterly Returns Filed on Annual Basis (IITA Section 704)

a) In general. Effective January 1, 1986 (and pursuant to P.A. 84-341) if the amount of tax deducted and withheld during the

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calendar year will be less than \$500.00 (formerly \$100), an employer may file an annual return for the calendar year or for any period for which a return is made as a final return. No application need be made to file an annual return. The return filed for such period shall report the amount of tax deducted and withheld during the period and not previously remitted. Form IL-941 is prescribed for making the return authorized under this paragraph. An employer shall use Form W-3 to submit the information contained on the combined Form W-2, in the same manner as required under ~~66-1117-Adm--Code~~ Section 100.7300 above.

- b) Duration of annual filing status. Authority to file a return pursuant to this Section shall remain in effect until that time during any calendar year when the amount of tax deducted and withheld equals or exceeds \$500.00. When during any such calendar year the amount deducted and withheld equals or exceeds \$500.00, an employer must file a quarterly return, as required under ~~66-1117-Adm--Code~~ Section 100.7300(a) above, for the quarter in which such event occurs and for all subsequent quarters until permission pursuant to ~~paragraph~~ subsection (a) of this Section is again granted. If at any time during the calendar year an employer is required to file a quarterly return pursuant to the preceding sentence, the permission granted under ~~paragraph~~ subsection (a) of this Section will not be granted again until the following calendar year.

- c) Cross reference. See IRTA Sections 1002(c) and 1002(d), the UPTA and 86 Ill. Adm. Code 700 for penalties for failure to file a return and remit the tax required by this Act.

(Source: Amended at 18 Ill. Reg. _____, effective January 13, 1994.)

Section 100.9000 General Income Tax Procedures (IRTA Section 901)

- a) Collection procedure. The Illinois income tax system basically is one of self-assessment. In general, each person or taxpayer liable for tax is required to file a prescribed form of return showing the facts upon which tax liability may be determined and assessed; the taxpayer is required to compute the tax due on the return and make payment thereof on or before the due date for filing the return. If the taxpayer fails to pay all or any part of the tax when due, the Director, after assessment, issues to each person liable for any unpaid portion thereof, a notice and demand for payment at the place and time stated in the notice. The income tax is principally collected through withholding at the source or by payments of estimated tax required by law to be filed by certain individual and corporate taxpayers. Neither withholding nor payment of estimated tax relieves a taxpayer from the duty of filing an income tax return otherwise required.

- 1) Prior to January 1, 1994, IRTA Section 1003(a) provides that

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interest at the rate of 9% per annum (or at such adjusted rate as is established under Section 6621(b) of the Internal Revenue Code) shall be paid on unpaid amounts of tax imposed by the Act from the due date to the date paid; however, subsection (e) thereunder provides that, if a notice and demand for payment of an amount due is issued, interest shall not be imposed for the period after the date of such issuance if such amount is paid within ten days.

- 2) On and after January 1, 1994, IRTA Section 1003(a) provides that interest shall be paid in the manner and at the rate prescribed in Section 3-2 of the UPTA for the period from such date to the date of payment of such amount. Section 3-2(c) of the UPTA provides that if notice and demand is made for the payment of any amount of tax due and if the amount due is paid within 21 days after the date of such notice and demand, interest on the amount so paid shall not be imposed for the period after the date of the notice and demand. ~~the income tax is principally collected through withholding at the source of by payments of estimated tax required by law to be filed by certain individual and corporate taxpayers. Neither withholding nor payment of estimated tax relieves a taxpayer from the duty of filing an income tax return otherwise required.~~

- b) Examination and determination of tax liability.
- 1) Filing and examination of return. After the income tax returns are filed with the Department, they are sorted, classified, and processed (which includes inspection of the return to verify the accuracy of the tax and supporting computations therein). Errors apparent in the return are corrected (see ~~66-1117-Adm--Code~~ Section 100.9200(a)(2) below) and notification of the error and the corrections are sent to the taxpayer. Thereafter, many of these returns are selected for examination which may be conducted by correspondence, office audit, or field audit. If, after examination, the return is accepted as filed, the taxpayer is notified by appropriate "no change" letter or report. If, as a result of examination, adjustments are proposed increasing the amount of the tax liability shown on the return or (with or without a claim for refund) decreasing it, and the taxpayer agrees in whole or in part with such adjustments, he may be requested to execute Illinois Form IL-870, waiving the restrictions on assessment and collection, and enabling immediate assessment upon acceptance by the Department after appropriate review of the examiner's (Revenue Auditor's) report. If adjustments are proposed with which the taxpayer does not agree, he ordinarily is afforded certain administrative appeal rights as described below which, however, do not apply in any case where criminal prosecution is under consideration or, in the discretion of the Director, the state's interest thereby would be prejudiced. Nor is

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appropriate action otherwise precluded where the assessment or collection of the tax is in jeopardy (see Section 1102 of the Illinois Income Tax Act).

- 2) Office conference with Department auditor and his supervisor. A taxpayer initiates the administrative appeal rights adverted to in paragraph (b)(1) above by requesting, after the Department has proposed adjustments, an office conference to be attended by either himself or his representative (or both), the auditor, and the auditor's supervisor or other designee; the request may be by telephone or in writing. Written objections to the adjustments proposed are not required. The objectives of the office conference are to provide taxpayers an opportunity by discussion and further consideration to reach an early agreement respecting disputed items arising from the examination and to assure to the extent possible that all available pertinent facts, contentions, and viewpoints are included in the file and taken into account in the formulation of recommendations. Further objectives are to insure that the Act provisions as interpreted by regulations and rulings are properly applied and that the recommendations are consistent with any Department positions thereunder, as well as to provide a full explanation to the taxpayer and to reflect in the case file the findings and conclusions reached and the reasons therefor. If as a result of the office conference adjustments are proposed with which the taxpayer agrees in whole or part, he again ordinarily will be requested to execute the aforementioned Form IL- 870 subject to the Department's review and acceptance; see 86 Ill. Adm. Code 100.9220(a) for the effect such execution has on the running of interest.
- 3) Audit Review: Issuance of Notice of Deficiency. If, after the office conference, the taxpayer does not agree with the proposed adjustments, the administrative case file will then be submitted to the Department's audit review staff for technical and arithmetic review. After such review, the Audit Review staff will issue a Notice of Deficiency pursuant to IITA 904(c) for any unagreed or disputed amounts. Notices of Deficiency, although to be prepared and issued by Audit Review, due to being in the nature of pleadings, shall be subject to review before issuance by the Income Tax Legal Division.

- c) Protest Procedures. Pursuant to IITA Sections 904(d) and 908(a) a taxpayer may protest the Notice of Deficiency by requesting a hearing before the Department. The taxpayer has 45 days (150 days if the taxpayer is outside the United States) after the issuance of a Notice of Deficiency to submit a proper protest to the Audit Review Division. Failure to properly protest the Notice of Deficiency within the 45 60 (150) day period results in the

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automatic assessment of the tax, and penalty shown therein. See 86 Ill. Adm. Code 200.120 for protest requirements. Upon receiving a timely protest to the adjustments proposed in the examiner's report, the administrative case file will be forwarded to the Department's Income Tax Legal Division.

- d) Hearings. Department Hearings shall be conducted in accordance with the regulations provided at 86 Ill. Adm. Code 200, "Practice and Procedure for Hearings Before the Illinois Department of Revenue".

(Source: Amended at 18 Ill. Reg. _____, effective January 13, 1994.)

SUBPART V: NOTICE AND DEMAND

Section 100.9100 Notice and Demand (IITA Section 902)

- a) In general.

- 1) Notice required. Except as provided in subsection paragraph (b) below ~~of this section~~, the Director or his delegate shall issue written notice and demand for payment for any unpaid portion of taxes, penalties, and interest imposed by the Act as soon as practicable after an amount payable thereunder has been deemed assessed. The written notice (see IITA Section 1402) shall be given to the person or persons liable for the unpaid amount and shall state a time and place for payment. (Effective for taxable years ending after December 30, 1973, the written notice shall be sent by first class mail or left at the person's (or persons') usual place of business.)

- 2) Tax shown as due on returns. IITA Section 601(a) requires that a taxpayer pay (without notice or demand) the amount of tax shown on a return which remains unpaid after taking into account certain amounts enumerated in IITA Section 601(b).

- 3) Self-assessment; mathematical errors. IITA Sections 903(a)(1) and (4) provides that the amount of tax shown due on a return or on an amended return increasing the tax shall be deemed assessed as of the date the return is filed but that, irrespective of other provisions, any amount paid as tax or in respect of tax paid under the Act other than amounts withheld or paid as estimated tax under Articles 7 or 8 shall be deemed assessed upon the date of receipt of payments. If as a result of a mathematical error the amount of tax shown on a return or on such amended return is understated, the Department is to notify the taxpayer that the portion of the correct amount of tax in excess of that shown on the return has been (deemed) assessed is due. Also, thereunder, the tax computed by the Department on a return properly filed without the tax computation is to be deemed assessed as of the date when payment is due.

- 4) Notice of deficiency as prerequisite to assessment.

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Inasmuch as the tax deemed assessed in each of the above instances is based on the facts reported in the return or amended return filed by the taxpayer, any notice and demand issued to effect immediate collection of the tax remaining unpaid in connection therewith is not considered to be a notice of deficiency as that term is used in IITA Section 903(a)(2). However, a notice of deficiency is a prerequisite for assessment if the taxpayer fails to file a tax return and under the authorization in IITA Section 904(b) the Department determines the amount of tax and penalties due according to its best judgment and information.

5) Interest.

A) Prior to January 1, 1994, IITA Section 1003(a) and (e) provides that interest at the rate of 9% per annum (or at such adjusted rate as is established under Section 6621(b) of the Internal Revenue Code) is to be paid on any amount of tax imposed by the Act not paid on or before the date prescribed for payment thereof except that, if paid within 10 days of the date of issuance of notice and demand therefor, interest is not to be imposed for the period after the notice and demand issuance date. Interest begins with the date of issuance of the notice and demand on any penalty not paid within the 10-day period. (See IITA Sections 601(a) and 1003.)

B) On and after January 1, 1994, IITA Section 1003(a) provides that interest shall be paid in the manner and at the rate prescribed in Section 3-2 of the UPIA for the period from such date to the date of payment of such amount. Section 3-2(c) of the UPIA provides that if notice and demand is made for the payment of any amount of tax due and if the amount due is paid within 21 days after the date of such notice and demand, interest on the amount so paid shall not be imposed for the period after the date of the notice and demand.

b) Judicial review.

1) In general. If a notice of deficiency has been issued and deemed assessed under IITA Section 903(a)(2) and the person (or persons) liable for the tax has filed a timely protest under IITA Section 908, notice and demand respecting such assessment shall not be made until all proceedings in court for review of the assessment have terminated or the time for taking thereof has expired without such proceedings being instituted.

2) Protest of notice of deficiency. IITA Section 908 provides that after a notice of deficiency is issued the taxpayer may file a protest against it within 45 days (150 days if the taxpayer is outside the United States). The Department's action on the protest, if no hearing was requested, becomes final 30 days after the mailing of a notice of

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decision. If a hearing was requested, the Department's action becomes final 30 days after the mailing of a notice of decision unless a rehearing is requested within that 30-day period. If, within that 30-day period, the taxpayer requests a rehearing on the decision, the Department's action becomes final either upon its issuance (within 10 days after the rehearing request is received) or of a denial of the request or, if such denial is not issued within that 10-day period, upon the Department's issuance (as soon as practicable) of a notice of final decision. (See 86 Ill. Adm. Code 100.9200 and 100.9100.)

3) Administrative Review of decisions. IITA Section 1201 states that the provisions of the Administrative Review Act and rules adopted pursuant thereto shall apply to and govern all proceedings for the judicial review of the Department's final actions under IITA Sections 908(d) and 910(d). Section 4 of that Act states that every action to review a final administrative decision shall be commenced by the filing of a complaint and the issuance of summons within 35 days from the date of service on the party affected of a copy of the decision sought to be reviewed.

c) Action for recovery of taxes.

1) In general. The Department, at any time that levy proceedings may be timely commenced under IITA Section 1109, regardless of whether a notice of lien was filed under the provisions of Section 1103 may bring an action in any court of competent jurisdiction within or without this state to recover the amount of unpaid taxes, penalties, and interest due under the Act. For purposes of such action, certification by the Department of the correctness of the amount of any deficiency, its assessment, and of its procedural compliance with all provisions of the Act shall constitute prima facie evidence of such correctness, assessment, and procedural compliance.

2) Levy and sale authorized. If tax due under the Act remains unpaid for 10 days after issuance of a notice and demand for payment and no review proceedings have been commenced, then under IITA Section 1109, the Department may institute levy and sale proceedings against real and personal property of the taxpayer within 20 years of the filing (under IITA Section 1103) of a notice of lien.

3) Liens. Under IITA Sections 1102 and 1103, the Department may file a notice of regular lien or jeopardy assessment lien respecting the amount due of unpaid tax and penalty (plus interest due and unpaid at the time the notice of lien is filed) in the office of the Recorder of Deeds in the county in which the property (real or personal) subject to the lien is located. If title to land to be affected by the lien notice is registered under the May 1, 1997 Act

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concerning land titles mentioned in IITA Section 1103, the notice is to be filed in the office of the Registrar of Titles of the county in which the property subject to the lien is situated. (See also IITA Section 1109.)

(Source: Amended at 18 Ill. Reg. _____, effective January 13, 1994.)

Section 100.9400 Credits and Refunds (IITA Section 909)

- a) In general. The Department may credit the amount of any overpayment including interest allowed thereon against any liability for tax imposed under the IITA or any other Act administered by the Department on the person who made the overpayment, and it shall refund the balance to such person. (See Section 39e of the Civil Adm. Code of Illinois, Ill. Rev. Stat. 1989 1991, ch. 127, par. 39e) [20 ILCS 2502/39e].
- b) Credit against estimated tax. An individual or corporate taxpayer by filing a return for the taxable year using the appropriate form and checking the appropriate box thereon in accord with the instructions shall have the amount of any overpayment or portion thereof credited thereafter against his estimated tax liability for the next succeeding taxable year.
- c) Interest on overpayments.

- 1) General rule. Subject to the provisions of this paragraph interest shall be allowed and paid upon any overpayment in respect of the tax imposed by the Act at a rate determined by reference to IITA Section 909(c). Where there is a dispute between a taxpayer and the Department regarding the amount of interest that is due, see 86 Ill. Adm. Code 100.9400(f)(6).

- 2) Overpayments. The overpayment in respect of any tax imposed by the Act includes any penalties assessed under IITA Section 1002(e), and any interest assessed on tax or on penalty under IITA Section 1003. For this purpose, an overpayment is any creditable or refundable portion of taxes, penalty, or interest which was previously paid.

- 3) Date of overpayment.

- A) The date of overpayment is the date of payment of any tax which thereafter becomes or is determined to be refundable or creditable for the taxable year, except as provided in subsection (B). There can be no overpayment of tax prior to the last day prescribed for filing the return, nor until the entire tax liability for the taxable year is satisfied, nor until the return is filed for the taxable year. Therefore, the date or dates of overpayment are the date of payment of the first amount which (when added to previous payments) exceeds the tax liability (including any interest or penalties) for the taxable year and the date or dates of any subsequent

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payment(s) made with respect to such tax liability, which in any event cannot be earlier than the last day prescribed for filing the return for the year, nor earlier than the date the return is filed. The "last day prescribed for filing the return" for purposes of this subsection and subsection (d) is the original due date, not the extended due date, if any.

- B) In the case of a federal change due to the final allowance of a carryback from a loss year ending prior to December 31, 1986, under the provisions of the federal Internal Revenue Code, the date of overpayment shall be as close of the taxable year in which the deduction, losses, or other item or event occurred which created the federal carryback, or the date when the return for the carryback year is filed, whichever is later.

- C) In the case of a federal change due to the final allowance of a carryback or carryforward from a loss year ending on or after December 31, 1986, and in the case of an Illinois change due to the carryforward or carryback of an Illinois net loss, Illinois investment credit, jobs credit, replacement tax credit, or other credit (other than estimated or tentative tax credit) from a loss or credit year ending on or after December 31, 1986, the date of overpayment shall be the date the claim for refund is filed, except that if any overpayment is refunded within 3 months of the date the claim for refund is filed, determined without regard to processing by the Comptroller, no interest shall be allowed on such overpayment.

- D) Beginning January 1, 1994, if a claim for refund relates to an overpayment attributable to a net loss carryback as provided by Section 207 of the Illinois Income Tax Act, the date of overpayment shall be the last day of the taxable year in which the loss was incurred. (see Section 3-2(d) of the Uniform Penalty and Interest Act)

- d) Period for which interest is allowable

- 1) In general.

- A) Prior to January 1, 1994, interest shall be allowed and paid from the date of overpayment to a date determined by the Director or his delegate, which shall be not more than 30 days prior to the date of any refund or credit. However, no interest shall be allowed on the amount of tax overpaid if such amount is refunded or credited within the later of three months after the last date prescribed for filing the return of such tax or within three months after the return was filed, determined without regard to processing by the Comptroller.

- B) On and after January 1, 1994 interest shall be allowed and paid in the manner prescribed under the UPIA.

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- 2) Estimated tax for succeeding year. Notwithstanding any other provision of this section, if a taxpayer elects on his return for the taxable year to have all or part of an overpayment shown on such return applied as an estimated tax payment for the succeeding taxable year, no interest shall be allowed on such portion of the overpayment so credited and such amount shall be applied as a payment on account of the estimated tax for such succeeding year or the installments thereof.

e) Examples. 06--111--Adm--Code--100-9400(a)---through--(d) This Section may be illustrated by the following examples:

- 1) Example 1: T, a calendar year taxpayer, receives an extension to June 30, 1972, to file his 1971 return. On April 15, 1972, T files a tentative return pursuant to IITA Section 602(a) showing an estimated liability of \$500 which has been paid through withholding, estimated tax payments, or as a payment with the tentative return of the tax properly estimated to be due. On June 15, 1972, T files his 1971 return showing a tax liability of \$3,000 including interest for late payment and remits \$2,500 which in addition to the \$500 paid as indicated satisfies the liability shown on his return. On August 15, 1972, T files a claim for refund for \$1,500 as an overpayment of 1971 tax. The date of overpayment for the computation of any interest thereon would be June 15 which is the date when payments first exceeded his liability as now shown as a result of his claim for refund, and which is the date when the return for the taxable year was first filed. See Example 2 for application for the 3 month rule.

- 2) Example 2: Assume the same facts as in Example (1) and that T's refund claim of \$1,500 was allowed and paid on September 1. No interest would be allowed because the refund was made within 3 months of June 15, the date the return for the taxable year was filed. If the refund was made on October 1, interest would be allowed from June 15 to a date which would be not more than 30 days prior to October 1.

- 3) Example 3: W, a calendar year taxpayer, files his return on March 7 and claims a refund as a result of excess withholding. The refund is made July 1. No interest would be allowed for the refund was made within 3 months after April 15, which is the later of the last day prescribed for filing the return or the date the return was filed. If with the same facts the refund is made July 28, interest would be allowed from April 15 (the date of overpayment).

- 4) Example 4: X, a calendar year corporation, sustains a federal net operating loss in 1973. X files a federal claim for refund, carrying the loss back to 1970 and receives a refund of federal taxes for 1970 based on the net operating loss carry back. (Refer to subsection (f)(4), below respecting a federal application for tentative carryback adjustment.) X then files Form IL-1120X claiming an overpayment of 1970

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Illinois tax as a result of a federal change in its reported taxable income for 1970. The date of overpayment would be December 31, 1973, the close of the taxable year in which the federal net operating loss occurred (provided an original 1970 IL-1120 had been filed by this date).

f) Refund claim.

- 1) In general. A claim for refund of an overpayment of income tax may be filed with the Department only if a return for the taxable year for which the refund is claimed has been filed. Although a timely return may have the effect of a claim for refund of tax over payment (due to excess withholding or payment under Articles 7 or 8 of the Act) it does not constitute a claim for refund under IITA Section 909(d) and (e) of the Act calling for consideration. A separate claim shall be filed for each taxable year for which an income tax overpayment was made. Every claim for refund shall be in writing, shall be on the appropriate form prescribed by the Department, and (using attachments if necessary) shall state the specific grounds upon which it is founded.

- 2) Evidence of claim filing. In preparing and filing a claim on either an amended return before the return due date, or after such date has passed on Form IL-843, Form IL-1040X, or Form IL-1120X, a taxpayer may attach two photocopies of page 1 of the original executed claim being filed as a pro forma claim receipt form identifying the claim with a written request that one photocopy be returned to the claimant as a receipt. Upon the Department's receiving the claim and the two photocopies of page 1 thereof if attached, the Director's designee shall place there on the Department's Date Received Stamp and sign in ink his initials therein, after which one photocopy shall be removed and mailed to the claimant for his use as a receipt. In absence of a photocopy of the claim form (so stamped and initialed) being attached to the original claim or being produced by the claimant, copies of the Department's records certified true by the Director or his designee shall be deemed prima facie correct to show whether or not a claim was filed and if so the date upon which it was received by the Department. Furthermore, the Department's records as to the date that the claim was date received in the Department's mail room shall be prima facie evidence that the postmark date on the claim was ten days prior to that date.

- 3) Amended return as claim; limited use. In an instance where a return for the taxable year is filed early, the latest received by the Department of any further return or amended return filed by the taxpayer on or before the last day prescribed for timely filing shall constitute and be accepted as his return for the taxable year. Therefore, if a return showing a tax liability for the taxable year has been filed with the

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- Department and the tax paid and the due date prescribed for filing that return has not passed, any claim for refund filed prior to that date shall be made by the filing of a further return marked "CORRECTED", showing the amount of the tax overpayment to be refundable. Form IL-1040X and Form IL-1120X shall be used for this purpose by individuals and corporations. Claim form; federal change. If, on the other hand, the due date for filing a return has passed and under the Act an overpayment based on a federal change has arisen, in addition to meeting the requirements of IITA Section 506 a claim for refund based on such change should be made by the filing (following the instructions thereon) of a notice of such change on Illinois Form IL-843, Form IL-1040X, or Form IL-1120X, as appropriate. To meet the requirements of IITA Section 909(d) for stating specific grounds, there should be within the Form or on an attachment an explanation in detail sufficient to show the nature of the items of change or alteration. If helpful or otherwise appropriate to show the grounds and to compute the amount claimed as refundable, another return marked "AMENDED" may be attached or filed in connection with the Form IL-843. Further, where a claim for refund is filed based on a federal change giving rise to an overpayment, documentation in form of the original federal documents or correspondence furnished the taxpayer or other satisfactory proof in connection with the change (or true and correct fully legible photocopies thereof) shall be attached evidencing that such federal change, represents an agreed to or final federal Internal Revenue Service (or court imposed) acceptance, recomputation, redetermination, change, tentative carryback adjustment or settlement; and it shall be stated or shown that no contest thereof is pending. In this connection, the payment received as the result of the filing of an application for a tentative carryback adjustment (on Form 1045 or Form 1139) pursuant to 26 U.S.C. 6411 is a change reportable under IITA Section 506. A claim for refund of an overpayment of Illinois income tax occasioned by the payment of a tentative carryback adjustment may be filed on Form IL-1040X and Form IL-1120X. A premature or incomplete claim on Form IL-843, Form IL-1040X, or Form IL-1120X shall not constitute a claim for refund within the meaning of IITA Section 909(d), nor for purposes of commencing the 6-month period in subsection (g) below. Upon any claim being received and identified as premature, incomplete, or otherwise defective under the Act, the Department as soon as practicable shall notify the taxpayer thereof in writing to enable if possible the timely submission of a mature and perfected claim.
- 5) Claim form; no federal change. If a return showing tax due for the taxable year has been filed and the tax paid and an overpayment based on a purely Illinois change has arisen and

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- not based to any extent on a change in federal income tax liability, any claim for refund should be made by the filing (following the instructions thereon) of Illinois Form IL-843, Form IL-1040X (individuals), or Form IL-1120X (corporations), as appropriate, using if necessary an attachment to set forth in detail each specific ground for refund, and if appropriate another return marked "AMENDED" may be attached to or filed in connection with the Form IL-843. Pertaining to purely Illinois changes, Forms IL-843, IL-1040X and IL-1120X are designed for use not only to claim a refund of tax overpayment but also to report an increase in the amount of previously reported or determined income tax liability for the taxable year.
- 6) Informal claim not permitted; disputes regarding the amount of interest due. In all cases where the original return due date has passed, claims for refund shall be filed using the following forms, as appropriate: Form IL-843, Form IL-1040X and Form IL-1120X. These forms may also be used by taxpayers to claim additional interest where there is a dispute regarding the amount of interest that is due from the Department relative to a refund. Such claims for additional interest must be filed either within the 60 45-day protest period for claim denials (see IITA Section 910) or within the limitations period for filing claims for refund for the taxable year for which the interest is due (see IITA Section 911). See 86 Ill. Adm. Code 200.120 for procedure on protest. An "informal claim", such as a letter from the taxpayer, is insufficient for the purpose of establishing or extending any of the limitations in IITA Section 911 or in subsections (g) and (h) of this section.
- g) Notices of refund or denial.
- 1) In general. The Department shall examine a claim for refund, in connection as appropriate with the return for the taxable year to which it relates, as soon as practicable after it is filed to determine the correct amount of tax and the amount of any refundable overpayment to which the claimant-taxpayer may be entitled. If for the taxable year involved the Department finds the claimant entitled to a refund in any amount, it shall issue an appropriate notice of refund, abatement, or credit (see paragraph (b)). If the Department has failed to approve or deny the claim before the expiration of 6 months from the date the claim was filed, the claimant may nevertheless thereafter file with the Department a written protest addressed in accordance with the instructions in the applicable claim form (IL-1040-X, IL-1120-X, or IL-843). If a protest is filed, the Department shall consider the claim and, if the taxpayer has so requested, shall grant the taxpayer or the taxpayer's authorized representative a hearing within 6 months after the

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date such request is filed.

- 2) Notice of denial; notice of deficiency as denial. However, if the Department finds that the claim for refund is not allowable and proposes to issue a notice of denial or if taking into account the claim nevertheless finds adjustments which are a basis for proposing an increase in the amount of tax liability over that shown on the return, or decreasing it by an amount less than that claimed as refundable, the Department shall issue a notice of deficiency under IITA Section 904(c) (see 86 Ill. Adm. Code 100.9300(a)) or it shall issue a notice of denial or partial denial of the claim. In the event that a notice of deficiency is issued which indicates that the claim for refund was considered, such notice (of deficiency) shall constitute (concurrently) a notice of denial of the claim. Note that, in the absence of a written protest of the notice (of deficiency or denial) so issued (see 86 Ill. Adm. Code 200.120(b)), the Department's final action thereunder is not an administrative decision subject to judicial review (except as to jurisdictional questions) under the provisions of the Administrative Review Act (see 86 Ill. Adm. Code 100.9600).

- h) Effect of denial. Denial of a claim becomes final 60 45 days thereafter (irrespective of whether the claimant is outside the United States) except to the extent (in whole or part) that the claimant in the meantime shall have filed a protest, as provided by IITA Section 910 (see 86 Ill. Adm. Code 200.120(b)), against the denial of amounts claimed as refundable. In the absence of a written protest of the denial of the claim for refund, the Department's final action thereunder is not an administrative decision subject to judicial review (except as to jurisdictional questions) under the provisions of the Code of Civil Procedure (see 86 Ill. Adm. Code 100.9600).

- i) Time for protest. If after a claim for refund is denied by issuance of a notice of denial (see 86 Ill. Adm. Code 100.9400(g)(2)) a written protest against such denial is filed by the taxpayer within 6045 days thereafter (irrespective of whether the taxpayer is outside the United States), the Department shall reconsider the denial and, if requested, shall grant the taxpayer or his authorized representative a hearing, as provided for in IITA Section 914. See 86 Ill. Adm. Code 200 for protest and hearing procedures.

(Source: Amended at 18 Ill. Reg. _____, effective January 13, 1994)

Section 100.9420 Recovery of Erroneous Refund (IITA Section 912)

- a) An erroneous refund shall be considered a deficiency of tax on the date made, and shall be deemed assessed and shall be collected

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as provided in IITA Sections 903 and 904 (see 86 Ill. Adm. Code 100.9200, 100.9300 and 100.9320(g)).

- b) Prior to January 1, 1994, IITA Section 1003(f) provides that any portion of the tax imposed by the Act or any interest or penalty which has been erroneously refunded and which is recoverable by the Department shall bear interest at the rate of 9% per annum (or at such adjusted rate as is established under Section 6621(b) of the Internal Revenue Code) from the date of payment of such refund.
- c) Effective January 1, 1994, Section 3-2(e) of the Uniform Penalty and Interest Act provides that, only portion of the tax imposed by an Act to which this Act is applicable or any interest or penalty which has been erroneously refunded and which is recoverable by the Department shall bear interest from the date of payment of the refund. However, no interest will be charged if the erroneous refund is for an amount less than \$500 and is due to a mistake of the Department.

(Source: Amended at 18 Ill. Reg. _____, effective January 13, 1994)

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- 1) Heading of the Part: Retailers' Occupation Tax
- 2) Code Citation: 86 Ill. Adm. Code 130
- 3) Section Numbers: Adopted Action:
130.901 Amendment
130.905 Amendment
- 4) Statutory Authority: The Retailers' Occupation Tax Act [35 ILCS 120] and the Uniform Penalty and Interest Act [35 ILCS 735]
- 5) Effective Date of Amendment(s): January 13, 1994
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this amendment contain incorporations by reference? No
- 8) Date Filed in Agency's Principal Office: January 13, 1994
- 9) Notice of Proposal Published in Illinois Register:
September 24, 1993, Issue 39, 17 Ill. Reg. 15501
- 10) Has ICAR issued a Statement of Objections to these Amendments? No

11) Differences between proposal and final version: In response to a suggestion of the Index Division of the Secretary of State the Department corrected the indent level for Section 130.901(b)(1). In addition, Section 130.901(f) was modified by changing labels (A) and (B) to (1) and (2) and labels (i) and (ii) to (A) and (B).

In response to a comment received from the Printing Industry of Illinois and Indiana Association, the following typographical errors were corrected:

- 1) Section 130.901(e)(1) was modified to reference "December 31, 1993" rather than December 31, 1992.
- 2) In line one of Section 130.901(f)(A) (corrected to 130.901(f)(1)) "t" was replaced with "to."
- 12) Have all the changes agreed upon by the agency and ICAR been made as indicated in the agreement letter issued by ICAR? No agreement was issued by ICAR.
- 13) Will this amendment replace an emergency amendment currently in effect? No

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- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Amendment(s): This rulemaking amends the Department's rules concerning the Retailers' Occupation Tax Act to include references to the Uniform Penalty and Interest Act. The Uniform Penalty and Interest Act is effective January 1, 1994. In a separate rulemaking the Department has adopted a new Part (86 Ill. Adm. Code 700) that provides detailed rules on the new Uniform Penalty and Interest Act. These amendments to the Retailers' Occupation Tax Act rules cross-reference the new Act and the new rules as appropriate.
- 16) Information and questions regarding this adopted amendment shall be directed to:

Keith W. Staats
Associate Counsel
Office of General Counsel
Illinois Department of Revenue
101 West Jefferson
Springfield, Illinois 62794
Phone: (217) 782-7054

The full text of the Adopted Amendment begins on the next page:

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TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE

PART 130

RETAILERS' OCCUPATION TAX

SUBPART A: NATURE OF TAX

Section	Character and Rate of Tax
130.101	Responsibility of Trustees, Receivers, Executors or Administrators
130.105	Occasional Sales
130.110	Sale of Used Motor Vehicles by Leasing or Rental Business
130.111	Habitual Sales
130.115	Nontaxable Transactions
130.120	

SUBPART B: SALE AT RETAIL

Section	The Test of a Sale at Retail
130.201	Sales for Transfer Incident to Service
130.205	Sales of Tangible Personal Property to Purchasers for Resale
130.210	Further Illustrations
130.215	Sales to Lessors of Tangible Personal Property
130.220	

SUBPART C: CERTAIN STATUTORY EXEMPTIONS

Section	Farm Machinery and Equipment
130.305	Food, Drugs, Medicines and Medical Appliances
130.310	Fuel Sold for Use in Vessels on Rivers Bordering Illinois
130.315	Gasohol
130.320	Fuel Used by Air Common Carriers in International Flights
130.321	Graphic Arts Machinery and Equipment Exemption
130.325	Manufacturing Machinery and Equipment
130.330	Pollution Control Facilities
130.335	Rolling Stock
130.340	Oil Field Exploration, Drilling and Production Equipment
130.345	Coal Exploration, Mining, Off Highway Hauling, Processing, Maintenance and Reclamation Equipment
130.350	

SUBPART D: GROSS RECEIPTS

Section	Meaning of Gross Receipts
130.401	How to Avoid Paying Tax on State Tax Passed on to the Purchaser
130.405	Cost of Doing Business Not Deductible
130.410	Transportation and Delivery Charges
130.415	Finance or Interest Charges--Penalties--Discounts
130.420	

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Section	Traded-In Property
130.425	Deposit or Prepayment on Purchase Price
130.430	State and Local Taxes Other Than Retailers' Occupation Tax
130.435	Penalties
130.440	Federal Taxes
130.445	Installation, Alteration and Special Service Charges
130.450	

SUBPART E: RETURNS

Section	Monthly Tax Returns--When Due--Contents
130.501	Quarterly Tax Returns
130.502	Returns and How to Prepare
130.505	Annual Tax Returns
130.510	First Return
130.515	Final Returns When Business is Discontinued
130.520	Who May Sign Returns
130.525	Returns Covering More Than One Location Under Same Registration--Separate Returns for Separately Registered Locations
130.530	Payment of the Tax, Including Quarterly Monthly Payments in Certain Instances
130.535	Returns on a Transaction by Transaction Basis
130.540	Registrants Must File a Return for Every Return Period
130.545	Filing of Returns for Retailers by Suppliers Under Certain Circumstances
130.551	Prepayment of Retailers' Occupation Tax on Motor Fuel
130.555	Vending Machine Information Returns
130.560	Verification of Returns

SUBPART F: INTERSTATE COMMERCE

Section	Preliminary Comments
130.601	Sales of Property Originating in Illinois
130.605	Sales of Property Originating in Other States
130.610	

SUBPART G: CERTIFICATE OF REGISTRATION

Section	General Information on Obtaining a Certificate of Registration
130.701	Procedure in Disputed Cases Involving Financial Responsibility Requirements
130.705	Procedure When Security Must be Forfeited
130.710	Sub-Certificates of Registration
130.715	Separate Registrations for Different Places of Business of Same Taxpayer Under Some Circumstances
130.720	Display
130.725	Replacement of Certificate
130.730	Certificate Not Transferable
130.735	

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130.740 Certificate Required For Mobile Vending Units
130.745 Revocation of Certificate

SUBPART H: BOOKS AND RECORDS

Section
130.801 General Requirements
130.805 What Records Constitute Minimum Requirement
130.810 Records Required to Support Deductions
130.815 Preservation and Retention of Records
130.820 Preservation of Books During Pendency of Assessment Proceedings
130.825 Department Authorization to Destroy Records Sooner Than Would Otherwise be Permissible

SUBPART I: PENALTIES AND INTEREST

Section
130.901 Civil Penalties
130.905 Interest
130.910 Criminal Penalties

SUBPART J: BINDING OPINIONS

Section
130.1001 When Opinions from the Department are Binding

SUBPART K: SELLERS LOCATED ON, OR SHIPPING TO, FEDERAL AREAS

Section
130.1101 Definition of Federal Area
130.1105 When Deliveries on Federal Areas Are Taxable
130.1110 No Distinction Between Deliveries on Federal Areas and Illinois Deliveries Outside Federal Areas

SUBPART L: TIMELY MAILING TREATED AS TIMELY FILING AND PAYING

Section
130.1201 General Information
130.1205 Due Date that Falls on Saturday, Sunday or a Holiday

SUBPART M: LEASED PORTIONS OF LESSOR'S BUSINESS SPACE

Section
130.1301 When Lessee of Premises Must File Return for Leased Department
130.1305 When Lessor of Premises Should File Return for Leased Department
130.1310 Meaning of "Lessor" and "Lessee" in this Regulation

SUBPART N: SALES FOR RESALE

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Seller's Responsibility to Determine the Character of the Sale at the Time of the Sale
130.1401 Seller's Responsibility to Obtain Certificates of Resale and Requirements for Certificates of Resale
130.1405 Requirements for Certificates of Resale (Repealed)
130.1410 Resale Number--When Required and How Obtained
130.1415 Blanket Certificate of Resale (Repealed)
130.1420

SUBPART O: CLAIMS TO RECOVER ERRONEOUSLY PAID TAX

Section
130.1501 Claims for Credit--Limitations--Procedure
130.1505 Disposition of Credit Memoranda by Holders Thereof
130.1510 Refunds
130.1515 Interest

SUBPART P: PROCEDURE TO BE FOLLOWED UPON SELLING OUT OR DISCONTINUING BUSINESS

Section
130.1601 When Returns are Required After a Business is Discontinued
130.1605 When Returns Are Not Required After Discontinuation of a Business
130.1610 Cross Reference to Bulk Sales Regulation

SUBPART Q: NOTICE OF SALES OF GOODS IN BULK

Section
130.1701 Bulk Sales: Notices of Sales of Business Assets

SUBPART R: POWER OF ATTORNEY

Section
130.1801 When Powers of Attorney May be Given
130.1805 Filing of Power of Attorney With Department
130.1810 Filing of Papers by Agent Under Power of Attorney

SUBPART S: SPECIFIC APPLICATIONS

Section
130.1901 Addition Agents to Plating Baths
130.1905 Agricultural Producers
130.1910 Antiques, Curios, Art Work, Collectors' Coins, Collectors' Postage Stamps and Like Articles
130.1915 Auctioneers and Agents
130.1920 Barbers and Beauty Shop Operators
130.1925 Blacksmiths
130.1930 Chiropodists, Osteopaths and Chiropractors
130.1935 Computer Software

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130.1940 Construction Contractors and Real Estate Developers
 130.1945 Co-operative Associations
 130.1950 Dentists
 130.1951 Enterprise Zones
 130.1955 Farm Chemicals
 130.1960 Finance Companies and Other Lending Agencies - Installment Contracts
 - Repossessions
 130.1965 Florists and Nurserymen
 130.1970 Hatcheries
 130.1975 Operators of Games of Chance and Their Suppliers
 130.1980 Optometrists and Opticians
 130.1985 Pawnbrokers
 130.1990 Peddlers, Hawkers and Itinerant Vendors
 130.1995 Personalizing Tangible Personal Property
 130.2000 Persons Engaged in the Printing, Graphic Arts or Related Occupations, and Their Suppliers
 130.2005 Persons Engaged in Nonprofit Service Enterprises and in Similar Enterprises Operated As Businesses, and Suppliers of Such Persons
 130.2006 Sales by Teacher-Sponsored Student Organizations
 130.2007 Exemption Identification Numbers
 130.2008 Sales by Nonprofit Service Enterprises
 130.2010 Persons Who Rent or Lease the Use of Tangible Personal Property to Others
 130.2015 Persons Who Repair or Otherwise Service Tangible Personal Property
 130.2020 Physicians and Surgeons
 130.2025 Picture-Framers
 130.2030 Public Amusement Places
 130.2035 Registered Pharmacists and Druggists
 130.2040 Retailers of Clothing
 130.2045 Retailers on Premises of the Illinois State Fair, County Fairs, Art Shows, Flea Markets and the Like
 130.2050 Sales and Gifts By Employers to Employees
 130.2055 Sales by Governmental Bodies
 130.2060 Sales of Alcoholic Beverages, Motor Fuel and Tobacco Products
 130.2065 Sales of Automobiles for Use in Demonstration
 130.2070 Sales of Containers, Wrapping and Packing Materials and Related Products
 130.2075 Sales To Construction Contractors, Real Estate Developers and Speculative Builders
 130.2080 Sales to Governmental Bodies, Foreign Diplomats and Consular Personnel
 130.2085 Sales to or by Banks, Savings and Loan Associations and Credit Unions
 130.2090 Sales to Railroad Companies
 130.2095 Sellers of Gasohol, Coal, Coke, Fuel Oil and Other Combustibles
 130.2100 Sellers of Feeds and Breeding Livestock
 130.2105 Sellers of Newspapers, Magazines, Books, Sheet Music and Phonograph Records and Their Suppliers
 130.2110 Sellers of Seeds and Fertilizer

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130.2115 Sellers of Machinery, Tools and the Like
 130.2120 Suppliers of Persons Engaged in Service Occupations and Professions
 130.2125 Trading Stamps and Discount Coupons
 130.2130 Undertakers and Funeral Directors
 130.2135 Vending Machines
 130.2140 Vendors of Curtains, Slip Covers, Floor Covering and Other Similar Items Made to Order
 130.2145 Vendors of Meals
 130.2150 Vendors of Memorial Stones and Monuments
 130.2155 Vendors of Signs
 130.2156 Vendors of Steam
 130.2160 Vendors of Tangible Personal Property Employed for Premiums, Advertising, Prizes, Etc.
 130.2165 Veterinarians
 130.2170 Warehousemen
 ILLUSTRATION A: Examples of Tax Exemption Cards

AUTHORITY: Implementing the Illinois Retailers' Occupation Tax Act (Ill. Rev. Stat. 1991, ch. 120, pars. 440 through 453) [35 ILCS 120/1 through 14] and authorized by Section 39b3 of the Civil Administrative Code of Illinois (Ill. Rev. Stat. 1991, ch. 127, par. 39b3) [20 ILCS 2505/39b3].

SOURCE: Adopted July 1, 1933; amended at 2 Ill. Reg. 50, p. 71, effective December 10, 1978; amended at 3 Ill. Reg. 12, p. 4, effective March 19, 1979; amended at 3 Ill. Reg. 13, pp. 93 and 95, effective March 25, 1979; amended at 3 Ill. Reg. 23, p. 164, effective June 3, 1979; amended at 3 Ill. Reg. 25, p. 229, effective June 17, 1979; amended at 3 Ill. Reg. 44, p. 193, effective October 19, 1979; amended at 3 Ill. Reg. 46, p. 52, effective November 2, 1979; amended at 4 Ill. Reg. 24, pp. 520, 539, 564 and 571, effective June 1, 1980; amended at 5 Ill. Reg. 818, effective January 2, 1981; amended at 5 Ill. Reg. 3014, effective March 11, 1981; amended at 5 Ill. Reg. 12782, effective November 2, 1981; amended at 6 Ill. Reg. 2860, effective March 3, 1982; amended at 6 Ill. Reg. 6780, effective May 24, 1982; codified at 6 Ill. Reg. 8229; recodified at 6 Ill. Reg. 8999; amended at 6 Ill. Reg. 15225, effective December 3, 1982; amended at 7 Ill. Reg. 7990, effective June 15, 1983; amended at 8 Ill. Reg. 5319, effective April 11, 1984; amended at 8 Ill. Reg. 19062, at 8 Ill. Reg. 5319, effective April 11, 1984; amended at 10 Ill. Reg. 1937, effective January effective September 26, 1984; amended at 10 Ill. Reg. 1937, effective January 10, 1986; amended at 10 Ill. Reg. 12067, effective July 1, 1986; amended at 10 Ill. Reg. 19538, effective November 5, 1986; amended at 10 Ill. Reg. 19772, effective November 5, 1986; amended at 11 Ill. Reg. 425, effective March 2, 1987; amended at 11 Ill. Reg. 6252, effective March 20, 1987; amended at 11 Ill. Reg. 18284, effective October 27, 1987; amended at 11 Ill. Reg. 18767, effective October 28, 1987; amended at 11 Ill. Reg. 19138, effective October 29, 1987; amended at 11 Ill. Reg. 19696, effective November 23, 1987; amended at 12 Ill. Reg. 5652, effective March 15, 1988; emergency amendment at 12 Ill. Reg. 14401, effective September 1, 1988, for a maximum of 150 days, modified in response to an objection of the Joint Committee on Administrative Rules at 12 Ill. Reg. 19531, effective November 4, 1988, not to exceed the 150 day time limit of the original rulemaking; emergency expired January 20, 1989; amended

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at 13 Ill. Reg. 11824, effective June 29, 1989; amended at 14 Ill. Reg. 241, effective December 21, 1989; amended at 14 Ill. Reg. 872, effective January 1, 1990; amended at 14 Ill. Reg. 15463, effective September 10, 1990; amended at 14 Ill. Reg. 16028, effective September 18, 1990; amended at 15 Ill. Reg. 6621, effective April 17, 1991; amended at 15 Ill. Reg. 13542, effective August 30, 1991; amended at 15 Ill. Reg. 15757, effective October 15, 1991; amended at 16 Ill. Reg. 1642, effective January 13, 1992; amended at 17 Ill. Reg. 860, effective January 11, 1993; amended at 17 Ill. Reg. 18142, effective October 4, 1993; amended at 17 Ill. Reg. 19651, effective November 2, 1993; amended at 18 Ill. Reg. _____, effective January 13, 1994.

SUBPART I: PENALTIES AND INTEREST

Section 130.901 Civil Penalties

The Retailers' Occupation Tax Act provides the following penalties for violations of the Act or of any Regulation of the Department issued pursuant thereto:

- a) Filing an Incorrect Return

"If the tax computed upon the basis of the gross receipts as fixed by the Department is greater than the amount of tax due under the return or returns as filed, the Department shall (or if the tax or any part thereof that is admitted to be due by a return or returns, whether filed on time or not, is not paid, the Department may) issue the taxpayer a notice of tax liability for the amount of tax claimed by the Department to be due, together with a penalty of 10% thereof. Provided, that if the incorrectness of any return or returns as determined by the Department is due to fraud, said penalty shall be 30% of the tax due" (Section 4 of the Act). The above-quoted penalties apply on or after January 1, 1988 through December 31, 1993.
- b) Failure to File Return When Required, but Payment Prior to Notice of Tax Liability

"In case any person engaged in the business of selling tangible personal property at retail fails to file a return when and as herein required, but thereafter, prior to the Department's issuance of a notice of tax liability under this section, files a return and pays the tax, he shall also pay a penalty of 10% of the amount of the tax." (Section 5 of the Act)
- 1) The above-quoted penalty applies January 1, 1988 through December 31, 1993.
- A) EXAMPLE: The taxpayer's return for November 1987, is required to be filed on or before December 31, 1987. The taxpayer files the return on January 10, 1988. Because the return is filed late in January 1988, it is subject to the 10% penalty rate that went into effect January 1, 1988.
- B) EXAMPLE: The taxpayer's return for October 1987, is required to be filed on or before November 30, 1987. The taxpayer files the return on December 12, 1987. Because the return is filed late during December 1987, it is subject to

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the 7.5% penalty rate that was in effect during December 1987.

- 2) As to tax liability incurred before November 1, 1987, but on or after December 1, 1984, the penalty in this situation is 7.5%.

c) Filing Return at Required Time but Failure to Pay Tax

"In case any person engaged in the business of selling tangible personal property at retail files the return at the time required by the Act but fails to pay the tax, or any part thereof, when due, a penalty of 10% of the amount of the tax unpaid when due shall be added thereto." (Section 5 of the Act)

- 1) The above-quoted penalty applies on or after January 1, 1988 through December 31, 1993.
 - 2) As to tax liability incurred before January 1, 1988, but on or after December 1, 1984, the penalty in this situation is 7.5%.
- d) Filing Late Return Without Payment of Entire Tax
- "In case any person engaged in the business of selling tangible personal property at retail fails to file a return when and as herein required, but thereafter, prior to the Department's issuance of a notice of tax liability under this section, files a return but fails to pay the entire tax, a penalty of 10% of the full amount of tax shown by such return shall be added thereto." (Section 5 of the Act)
- 1) The above-quoted penalty applies on or after January 1, 1988 through December 31, 1993.
- 2) As to tax liability incurred before January 1, 1988, but on or after December 1, 1984, the penalty in this situation is 7.5%.

e) Failure to File Return When Required, and Failure to Pay Prior to Notice by Department

"In case any person engaged in the business of selling tangible personal property at retail fails to file a return, the Department shall determine the amount of tax due from him according to its best judgment and information, which amount so fixed by the Department shall be prima facie correct and shall be prima facie evidence of the correctness of the amount of tax due, as shown in such determination. ... The Department shall issue the taxpayer a notice of tax liability for the amount of tax claimed by the Department to be due, together with a penalty of 30% thereof." (Section 5 of the Act)
- 1) The above-quoted penalty applies to tax liability incurred on or after December 1, 1984 through December 31, 1993.
- 2) As to tax liability incurred before December 1, 1984, but after July 1, 1965, the penalty in this situation is 20%.

f) Beginning January 1, 1994, the Uniform Penalty and Interest Act applies to penalties imposed pursuant to Section 5 of the Act. Section 3-3 of the Uniform Penalty and Interest Act provides that:

- 1) A penalty of 5% of the tax required to be shown due on a return shall be imposed for failure to file the tax return on or before the due date prescribed for filing determined with regard for any extension of time for filing (penalty for late filing or nonfiling). If any unprocessable return is corrected and filed within 21 days after notice by the Department, the late filing or

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nonfiling penalty shall not apply. If a penalty for late filing or nonfiling is imposed in addition to the penalty for late payment, the total penalty due shall be the sum of the late filing penalty and the applicable late payment penalty.

- 2) A penalty of 15% of the tax shown on the return or the tax required to be shown due on the return shall be imposed for failure to pay:

A) the tax shown due on the return on or before the due date prescribed for payment of that tax, an amount of underpayment of estimated tax, or an amount that is reported in an amended return other than an amended return timely filed as required by subsection (b) of Section 506 of the Illinois Income Tax Act (penalty for late payment or nonpayment of admitted liability); or

B) the full amount of any tax required to be shown due on a return and which is not shown (penalty for late payment or nonpayment of additional liability), within 21 days after a notice of arithmetic error, notice and demand, or a final assessment is issued by the Department. In the case of a final assessment arising following a protest and hearing, the 21 day period shall not begin until all proceedings in court for review of the final assessment have terminated or the period for obtaining a review has expired without proceedings for a review having been instituted. In the case of a notice of tax liability that becomes a final assessment without a protest and hearing, the penalty provided in this Section shall be imposed at the expiration of the period provided for the filing of a protest. (Section 3-3(b) of the Uniform Penalty and Interest Act)

- g) Effect of a Taxpayer's Bankruptcy Filing Upon a Notice of Tax Liability

Generally, if a protest to a notice of tax liability and a request for hearing is not filed within 20 days after issuance of a notice of tax liability (NTL), such notice of tax liability shall become final without the necessity of a final assessment being issued and shall be deemed to be a final assessment. (See Section 5 of the Act) However, if prior to the issuance of the NTL, a taxpayer has filed a petition in U.S. Bankruptcy Court and the automatic stay is still in effect, or if a taxpayer files such a petition within 20 days of the issuance of an NTL, the automatic stay prevents any pre-petition liability included in the NTL from becoming final even though not protested within 20 days of the issuance of the NTL. If any pre-petition tax included in the NTL is not paid to the Department through the bankruptcy proceeding, adjudicated by the bankruptcy court, or discharged by the bankruptcy court, the taxpayer has 20 days after termination of the automatic stay to protest the pre-petition liability and request an administrative hearing pursuant to 86 Ill. Adm. Code 200.

- h) Over-Collection of Tax, or Collection of Tax on Nontaxable Receipts

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"If a seller collects an amount (however designated) that purports to reimburse the seller for retailers' occupation tax liability measured by receipts that are not subject to retailers' occupation tax, or if a seller, in collecting an amount (however designated) that purports to reimburse the seller for retailers' occupation tax liability measured by receipts that are subject to tax under the Act, collects more from the purchaser than the seller's retailers' occupation tax liability on the transaction, the purchaser shall have a legal right to claim a refund of that amount from the seller. If, however, that amount is not refunded to the purchaser for any reason, the seller is liable to pay that amount to the Department. This paragraph does not apply to an amount collected by the seller as reimbursement for the seller's retailers' occupation tax liability on receipts that are subject to tax under this Act as long as such collection is made in compliance with the tax collection brackets prescribed by the Department in its rules and regulations." (Section 2-40 of the Act)

- h) Filing Late Return Due to "Reasonable Cause"

1) "However, where the failure to file any tax return required under this Act on the date prescribed therefor (including any extensions thereof), is shown to be unintentional and nonfraudulent and has not occurred in the 2 years immediately preceding the failure to file on the prescribed date or is due to ... other reasonable cause the penalties imposed by this Act shall not apply." (Section 5 of the Act)

2) In general, a "reasonable cause" for the failure to file any return would be what is acceptable to the federal government for federal income tax purposes as a "reasonable cause" for failure to file a federal income tax return.

(Source: Amended at 18 Ill. Reg. _____, effective January 13, 1994.)

Section 130.905 Interest

a) In addition to any penalty provided for in this Act, any amount of tax which is not paid when due shall bear interest at the rate of 1% prior to September 17, 1981, and at the rate of 2% on and after September 17, 1981 and prior to January 1, 1987, and at the rate of 1.25% on and after January 1, 1987 through December 31, 1993, per month or fraction thereof from the date when such tax becomes past due until such tax is paid or a judgment therefor is obtained by the Department. Any amount of tax which is not paid when due shall bear interest at the rate and in the manner specified in Section 3-2 and 3-9 of the Uniform Penalty and Interest Act from the date when such tax becomes past due until such tax is paid or a judgment therefor is obtained by the Department.

b) If the time for making or completing an audit of a taxpayer's books and records is extended with the taxpayer's consent, at the request of and for the convenience of the Department, beyond the date on which

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the statute of limitations upon the issuance of a notice of tax liability by the Department otherwise would run, no interest shall accrue during the period of such extension. (Section 5 of the Act)

(Source: Amended at 18 Ill. Reg. _____, effective January 13, 1994)

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Service Occupation Tax
- 2) Code Citation: 86 Ill. Adm. Code 140
- 3) Section Numbers: Adopted Action:
140.801 Amendment
140.1415 Amendment
- 4) Statutory Authority: The Service Occupation Tax Act [35 ILCS 115] and the Uniform Penalty and Interest Act [35 ILCS 735]
- 5) Effective Date of Amendment(s): January 13, 1994
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this amendment contain incorporations by reference? No
- 8) Date Filed in Agency's Principal Office: January 13, 1994
- 9) Notice of Proposal Published in Illinois Register:
September 24, 1993, Issue 39, 17 Ill. Reg. 15515
- 10) Has ICAR issued a Statement of Objections to these Amendments? No
- 11) Differences between proposal and final version: In response to a suggestion of the Index Department of the Secretary of State the Department will insert the SUBPART N heading before Section 140.1415 in the Illinois Register version of the adopted rulemaking.

In response to comments of the Printing Industry of Illinois and Indiana Association, the Department made the following changes:
1) In Section 140.1415(a), line 4 of the example, the phrase "made an sale" was corrected to read "made a sale."
2) In Section 140.1415(a), line 5 of the example, the phrase "collected service occupation tax and remitted the tax" was replaced with the phrase "collected service use tax and remitted service occupation tax."
12) Have all the changes agreed upon by the agency and ICAR been made as indicated in the agreement letter issued by ICAR? No agreement letter was issued by ICAR.
13) Will this amendment replace an emergency amendment currently in effect? No.

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- 14) Are there any amendments pending on this Part? No.
- 15) Summary and Purpose of Amendment(s): This rulemaking amends the Department's rules concerning the Service Occupation Tax Act to include references to the Uniform Penalty and Interest Act. The Uniform Penalty and Interest Act is effective January 1, 1994. In a separate rulemaking, the Department has adopted a new Part (86 Ill. Adm. Code 700) that provides detailed rules on the new Uniform Penalty and Interest Act. These amendments to the Service Occupation Tax Act rules cross-reference the new Uniform Penalty and Interest Act and the new rules as appropriate.

- 16) Information and questions regarding this adopted amendment shall be directed to:

Keith W. Staats
Associate Counsel
Office of General Counsel
Illinois Department of Revenue
101 West Jefferson
Springfield, Illinois 62794
Phone: (217) 782-7054

The full text of the Adopted Amendment begins on the next page:

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT(S)

TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE

PART 140
SERVICE OCCUPATION TAX

SUBPART A: NATURE OF TAX

Section	
140.101	Basis and Rate of the Service Occupation Tax
140.105	Registration of Servicemen
140.110	Presumption that Tax Applies (Repealed)
140.115	Occasional Sales to Servicemen by Suppliers (Repealed)
140.120	Meaning of Serviceman
140.125	Examples of Nontaxability
140.126	Exemption of Food, Drugs and Medical Appliances
140.130	Suppliers of Printers (Repealed)
140.135	Sales of Drugs and Related Items, to or by Pharmacists
140.140	Other Examples of Taxable Transactions
140.145	Multi-Service Situations

SUBPART B: DEFINITIONS

Section	
140.201	General Definitions

SUBPART C: BASE OF THE TAX

Section	
140.301	Cost Price
140.305	Refunds by Supplier or Serviceman

SUBPART D: TAX RETURNS

Section	
140.401	Monthly Returns When Due -- Contents of Returns
140.405	Annual Tax Returns
140.410	Final Return
140.415	Taxpayer's Duty to Obtain Form
140.420	Annual Information Returns by Servicemen
140.425	Filing of Returns for Serviceman "Suppliers" by their Suppliers Under Certain Circumstances
140.430	Incorporation by Reference

SUBPART E: INTERSTATE COMMERCE

Section	
140.501	Sales of Service Involving Property Originating in Illinois
140.505	Sales of Service Involving Property Originating Outside of Illinois

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(Repealed)

SUBPART F: REGISTRATION UNDER THE SERVICE OCCUPATION TAX ACT

Section
140.601

General Information

SUBPART G: BOOKS AND RECORDS

Section
140.701

Requirements

SUBPART H: PENALTIES, INTEREST AND PROCEDURES

Section
140.801

General Information

SUBPART I: WHEN OPINIONS FROM THE DEPARTMENT ARE BINDING

Section
140.901

Written Opinions

SUBPART J: COLLECTION OF THE TAX

Section
140.1001

Payment of Tax to the Supplier

140.1005

Receipt to be Obtained for Tax Payments

140.1010

Payment of Tax Directly to the Department

140.1015

Itemization of the Tax by Suppliers

140.1020

Use of Bracket Chart

140.1025

Advertising in Regard to the Tax

SUBPART K: TIMELY MAILING TREATED AS TIMELY FILING AND PAYING -- MEANING OF DUE DATE WHICH FALLS ON SATURDAY, SUNDAY OR A HOLIDAY

Section
140.1101

Filing of Documents with the Department

SUBPART L: LEASED PORTIONS OF LESSOR'S BUSINESS SPACE

Section
140.1201

When Lessee of Premises May File Return for Leased Department

140.1205

When Lessor of Premises Should File Return for Leased Department

140.1210

Meaning of "Lessor" and "Lessee" in this Regulation

SUBPART M: USE OF EXEMPTION CERTIFICATES

Section
140.1301

When Purpose of Serviceman's Purchase is Known (Repealed)

140.1305

When Purpose of Serviceman's Purchase is Unknown

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT(S)

140.1310 Blanket Percentage Exemption Certificates (Repealed)

SUBPART N: CLAIMS TO RECOVER ERRONEOUSLY PAID TAX

Section
140.1401

Claims for Credit -- Limitations -- Procedure

140.1405

Disposition of Credit Memoranda by Holders Thereof

140.1410

Refunds

140.1415

Interest

SUBPART O: DISCONTINUATION OF A BUSINESS

Section
140.1501

Procedures

SUBPART P: NOTICE OF SALES OF GOODS IN BULK

Section
140.1601

Requirements and Procedures

SUBPART Q: POWER OF ATTORNEY

Section
140.1701

General Information

AUTHORITY: Implementing the Service Occupation Tax Act (Ill. Rev. Stat. 1991, ch. 120, pars. 439.101-439.121) [35 ILCS 115] and authorized by Section 39b30 of the Civil Administrative Code of Illinois (Ill. Rev. Stat. 1991, ch. 127, par. 39b30) [20 ILCS 2505/39b30].

SOURCE: Adopted May 21, 1962; amended at 3 Ill. Reg. 23, p. 161, effective June 3, 1979; amended at 3 Ill. Reg. 44, p. 198, effective October 19, 1979; amended at 4 Ill. Reg. 24, pp. 526, 536 and 550, effective June 1, 1980; amended at 5 Ill. Reg. 822, effective January 2, 1981; amended at 6 Ill. Reg. 2879, 2883, 2886, 2892, 2895 and 2897, effective March 3, 1982; codified at 6 Ill. Reg. 9326; amended at 9 Ill. Reg. 7941, effective May 14, 1985; amended at 11 Ill. Reg. 14090, effective August 11, 1987; emergency amendment at 12 Ill. Reg. 14419, effective September 1, 1988, for a maximum of 150 days; emergency expired January 29, 1989; amended at 13 Ill. Reg. 9388, effective June 6, 1989; amended at 14 Ill. Reg. 262, effective January 1, 1990; amended at 14 Ill. Reg. 15480, effective September 10, 1990; amended at 15 Ill. Reg. 5834, effective April 5, 1991; amended at 18 Ill. Reg. _____, effective January 13, 1994.

SUBPART H: PENALTIES, INTEREST AND PROCEDURES

Section 140.801 General Information

All civil penalties, provisions concerning interest and procedures (such as the

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making of assessments, the venue and mode of conducting hearings, subpoenas, matters pertaining to judicial review and other procedural subjects), together with statutes of limitation (except that these apply from the date when the tax is due rather than from the date when the gross receipts are received), are the same under the Service Occupation Tax Act as under the Retailers' Occupation Tax Act (see Retailers' Occupation Tax Regulations, 86 Ill. Adm. Code 130, Subpart I and Ill. Rev. Stat. 1979 1991, ch. 120, pars. 440-453 et seq.) [35 ILCS 120]. For information concerning civil penalties and interest see the Uniform Penalty and Interest Act [35 ILCS 735] and 86 Ill. Adm. Code 700. For information concerning criminal penalties, see Section 15 of the Service Occupation Tax Act.

(Source: Amended at 18 Ill. Reg. _____, effective January 13, 1994)

SUBPART N: CLAIMS TO RECOVER ERRONEOUSLY PAID TAX

Section 140.1415 Interest

- a) Effective February 1, 1985 until January 1, 1994, any credit or refund that is allowed under the Act shall bear interest at the rate of 1% per month or fraction thereof from the date when the erroneous payment for which the credit or refund is being allowed was made to the Department until the credit memorandum is issued or the refund is paid. Interest shall not be paid on claims filed after the effective date of the Uniform Penalty and Interest Act and 86 Ill. Adm. Code 700 except such interest which is paid in accordance with the Act. (Section 3-9 of the Uniform Penalty and Interest Act) [35 ILCS 735/3-9]

EXAMPLE: A taxpayer files a claim for credit with the Department on January 15, 1994 for an overpayment of Service Occupation Tax. The overpayment occurred in October 1992 when the taxpayer, an Illinois serviceman, made a sale of service to an Illinois service customer, collected service use tax and remitted service occupation tax to the Department. The sale of service involved the repair of a piece of graphic arts machinery and equipment. The serviceman determined that the repair should have been made tax-free, refunded the tax to the service customer and filed a claim for credit with the Department. The credit memorandum is issued on June 15, 1994. Interest shall be paid at the rate of 1% per month for the period from October 1992 through December 31, 1993; and at the semiannually adjusted interest rate imposed pursuant to the Uniform Penalty and Interest Act from January 1, 1994 through June 15, 1994, the date on which the credit memorandum was issued by the Department.

- b) No interest will be allowed if the overpayment is found by the Department to have been made deliberately for the purpose of drawing interest, or if the overpayment is ascertained not to have been bona fide for some other reason.

- c) When a claim that is allowed is paid by means of a credit memorandum

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Instead of by means of a cash refund, the claim will be considered to have been paid when the credit memorandum is issued by the Department to the claimant, and no interest will be allowed or paid by the Department for any period subsequent to that, even if the claimant does not use or assign the credit memorandum immediately after it is issued.

(Source: Amended at 18 Ill. Reg. _____, effective January 13, 1994)

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NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Service Use Tax
- 2) Code Citation: 86 Ill. Adm. Code 160
- 3) Section Numbers: Adopted Action:
160.140 Amendment
160.165 Amendment
- 4) Statutory Authority: The Service Use Tax Act [35 ILCS 110] and the Uniform Penalty and Interest Act [35 ILCS 735/3]
- 5) Effective Date of Amendment(s): January 13, 1994
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this amendment contain incorporations by reference? No
- 8) Date Filed in Agency's Principal Office: January 13, 1994
- 9) Notice of Proposal Published in Illinois Register:
September 24, 1993, Issue 39, 17 Ill. Reg. 15522
- 10) Has ICAR issued a Statement of Objections to these Amendments? No
- 11) Differences between proposal and final version: The citations in the authority note and in Section 160.140 to the Illinois Revised Statutes were deleted; only the citations to the Illinois Compiled Statutes are referenced.
- 12) Have all the changes agreed upon by the agency and ICAR been made as indicated in the agreement letter issued by ICAR? No agreement letter was issued by ICAR.
- 13) Will this amendment replace an emergency amendment currently in effect? No.
- 14) Are there any amendments pending on this Part? No.

15) Summary and Purpose of Amendment(s): This rulemaking amends the Department's rules concerning the Service Use Tax Act to include references to the Uniform Penalty and Interest Act ("the UPIA"). The UPIA is effective January 1, 1994. In a separate rulemaking, the Department has adopted a new Part (86 Ill. Adm. Code 700) that provides detailed rules on the new UPIA. These amendments to the Service Use Tax Act rules cross-reference the new UPIA and the new UPIA rules as appropriate.

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NOTICE OF ADOPTED AMENDMENTS

- 16) Information and questions regarding this adopted amendment shall be directed to:

Keith W. Staats
Associate Counsel
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Illinois Department of Revenue
101 West Jefferson
Springfield, Illinois 62794
Phone: (217) 782-7054

The full text of the Adopted Amendment begins on the next page:

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENTS

TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUEPART 160
SERVICE USE TAX

Section:

- 160.101 Nature of the Tax
- 160.105 Definitions
- 160.110 Kinds of Uses And Users Not Taxed
- 160.115 Collection Of The Service Use Tax By Servicemen
- 160.120 Receipt For The Tax
- 160.125 Special Information For Taxable Users
- 160.130 Registration Of Servicemen
- 160.135 Serviceman's Return
- 160.140 Penalties, Interest And Procedures
- 160.145 Incorporation Of Illinois Service Occupation Tax Regulations By Reference
- 160.150 Claims To Recover Erroneously Paid Tax--Limitations-Procedures
- 160.155 Disposition Of Credit Memoranda By Holders Thereof
- 160.160 Refunds
- 160.165 Interest

AUTHORITY: Implementing the Service Use Tax Act (Ill. Rev. Stat. 1989, ch. 120, pars. 429-41 et seq.) [35 ILCS 110/1 - 110/21] and authorized by Section 39b30 of the Civil Administrative Code of Illinois (Ill. Rev. Stat. 1989, ch. 127, par. 49b30) [20 ILCS 2505/39b30].

SOURCE: Adopted May 21, 1962; codified at 6 Ill. Reg. 9326; amended at 8 Ill. Reg. 8619, effective June 5, 1984; amended at 11 Ill. Reg. 5322, effective March 17, 1987; amended at 11 Ill. Reg. 9963, effective May 8, 1987; amended at 13 Ill. Reg. 9399, effective June 6, 1989; amended at 15 Ill. Reg. 5845, effective April 5, 1991; amended at — Ill. Reg. —, effective January 13, 1994.

Section 160.140 Penalties, Interest And Procedures

When civil penalties, provisions concerning interest and procedures (such as the making of assessments, the venue and mode of conducting hearings, subpoenas, matters pertaining to judicial review and other procedural subjects), together with statutes of limitation, are the same under the Service Use Tax Act as under the Illinois Service Occupation Tax Act. For information concerning civil penalties and interest see the Uniform Penalty and Interest Act [35 ILCS 735/3-1 - 735/3-9] and 86 Ill. Adm. Code 700. For information concerning criminal penalties, see Section 15 of the Service Use Tax Act.

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(Source: Amended at — Ill. Reg. —, effective January 13, 1994.)

Section 160.165 Interest

- a) Any credit or refund that is allowed under the Act shall bear interest at the rate of 1% per month or fraction thereof from the date when the erroneous payment for which the credit or refund is being allowed was made to the Department until the credit memorandum is issued or the refund is paid until January 1, 1994. *Interest shall not be paid on claims filed after the effective date of the Uniform Penalty and Interest Act and 86 Ill. Adm. Code 700 except such interest which is paid in accordance with the Act.* (Section 3-9 of the Uniform Penalty and Interest Act) [35 ILCS 735/3-9]

EXAMPLE: A taxpayer files a claim for credit with the Department on January 15, 1994 for an overpayment of Service Use Tax. The overpayment occurred in October 1992 when the taxpayer, an out-of-state registered serviceman, made a sale of service to an Illinois service customer, collected Service Use Tax on 50% of the total bill to the service customer and remitted the tax to the Department. The sale of service involved the repair of a piece of graphic arts machinery and equipment. The serviceman determined that the repair should have been made tax-free, refunded the tax to the service customer and filed a claim for credit with the Department. The credit memorandum is issued on June 15, 1994. Interest shall be paid at the rate of 1% per month for the period from October 1992 through December 31, 1993; and at the semiannually adjusted interest rate imposed pursuant to the Uniform Penalty and Interest Act from January 1, 1994 until June 15, 1994, the date on which the credit memorandum was issued by the Department.

- b) No interest will be allowed if the overpayment is found by the Department to have been made deliberately for the purpose of drawing interest, or if the overpayment is ascertained not to have been bona fide for some other reason.

- c) When a claim that is allowed is paid by means of a credit memorandum instead of by means of a cash refund, the claim will be considered to have been paid when the credit memorandum is issued by the Department to the claimant, and no interest will be allowed or paid by the Department for any period subsequent to that, even if the claimant does not use or assign the credit memorandum immediately after it is issued.

(Source: Amended at — Ill. Reg. —, effective January 13, 1994.)

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NOTICE OF ADOPTED RULES

1) Heading of the Part: Uniform Penalty and Interest Act

2) Code Citation: 86 Ill. Adm. Code 700

3) Section Numbers: Adopted Action:

700.100 New Section
700.110 New Section
700.200 New Section
700.210 New Section
700.220 New Section
700.230 New Section
700.300 New Section
700.310 New Section
700.320 New Section
700.330 New Section
700.340 New Section
700.400, 700.500 New Section

4) Statutory Authority: The Uniform Penalty and Interest Act 35 ILCS 735/3

5) Effective Date of Amendment(s): January 13, 1994

6) Does this rulemaking contain an automatic repeal date? No.

7) Does this amendment contain incorporations by reference? No.

8) Date Filed in Agency's Principal Office: January 13, 1994

9) Notice of Proposal Published in Illinois Register:

October 8, 1993, Issue 41, 17 Ill. Reg. 16421

10) Has ICAR issued a Statement of Objections to these Amendments? No.

11) Differences between proposal and final version: In response suggestions of the Index Division of the Secretary of State, the following changes were made to the rulemaking:

- 1) In Section 700.100, the language labeled as EXAMPLES 1 and 2 were indented 10 spaces to the text level of (a) and (b).
- 2) From Section 700.110 through the remainder of the rulemaking all EXAMPLE language was indented an additional 5 spaces.
- 3) In Section 700.230(f) "section" was changed to "Section" and "section (b)" was changed to "subsection (b)."

DEPARTMENT OF REVENUE
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4) In Section 700.230(f)(1) the second parenthesis was deleted from the reference "(see subsection (a) above)".

5) In Section 700.230(g) we have spelled out the dates in the example.

In response to a suggestion of the staff of the Joint Committee on Administrative Rules, the first line of Section 700.400(e)(2) was amended to insert the word "for" between "cause" and "abatement."

In response to a comment from the Illinois CPA Society, Section 700.220(c), Example 4 was amended to add after the word "taxpayer" in line 1 "(C corporation)."

12) Have all the changes agreed upon by the agency and ICAR been made as indicated in the agreement letter issued by ICAR? No agreement letter was issued by ICAR.

13) Will this amendment replace an emergency amendment currently in effect? No.

14) Are there any amendments pending on this Part? No.

15) Summary and Purpose of Amendment(s): This rulemaking implements the Uniform Penalty and Interest Act ("the UPIA"). The UPIA becomes effective January 1, 1994. The UPIA applies to virtually all taxes administered by the Illinois Department of Revenue. The UPIA reduces the number of penalty rates from 30 to 6. The UPIA results in one interest rate with reference to taxes administered by the Department. The interest rate is the same for interest charged and interest paid by the Department. The rulemaking describes the application of the UPIA and the rules. The rules explain how interest will be charged and paid by the Department. The nature of the penalties charged taxpayers under the UPIA is explained by the rules, as is the manner in which those penalties are applied. The rules detail the standards that will be used by the Department in determining whether reasonable cause exists for the abatement of any penalty. The rules also discuss the manner in which payments received by the Department from taxpayers will be applied to the outstanding obligations of taxpayers.

16) Information and questions regarding this adopted amendment shall be directed to:

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED RULES

Keith W. Staats
Associate Counsel
Office of General Counsel
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The full text of the Adopted Amendment begins on the next page:

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NOTICE OF ADOPTED RULES

TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE
PART 700
UNIFORM PENALTY AND INTEREST ACT

SUBPART A: SCOPE AND APPLICATION OF THE ACT

Section
700.100 Scope of the Act and this Part
700.110 Application of the Provisions of the Act and this Part

SUBPART B: INTEREST

700.200 Interest Paid and Interest Charged
700.210 Interest Rate Calculation
700.220 Interest Charged Taxpayers
700.230 Interest Paid Taxpayers on Overpayments

SUBPART C: PENALTIES

700.300 Penalty for Late Filing or Failure to File and Penalty for Late Payment of Tax
700.310 Penalty for Failure to File Correct Information Returns
700.320 Penalty for Negligence
700.330 Penalty for Fraud
700.340 Personal Liability Penalty

SUBPART D: REASONABLE CAUSE

700.400 Reasonable Cause

SUBPART E: PAYMENT APPLICATION

700.500 Payment Application

AUTHORITY: Implementing the Uniform Penalty and Interest Act (Ill. Rev. Stat. 1991, ch. 120, par. 2603-1 et seq.)[35 ILCS 735/3-1], and authorized by Section 39b3 of the Civil Administrative Code of Illinois (Ill. Rev. Stat. 1991, ch. 127, par. 39b3)[20 ILCS 2502/39b3].

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SOURCE: Adopted at 18 Ill. Reg. _____, effective January 13, 1994.

SUBPART A: SCOPE AND APPLICATION OF THE ACT

Section 700.100 Scope of the Act and this Part

The Uniform Penalty and Interest Act [35 ILCS 735/3-1 et seq.] ("the Act" or "the UPIA") and this Part apply to all taxes administered by the Illinois Department of Revenue with the exception of the Racing Privilege Tax Act [230 ILCS 5/27], the Revenue Act of 1939 [35 ILCS 205/1 et seq.], the Real Estate Transfer Tax Act [35 ILCS 305/1 et seq.] and the Coin-Operated Amusement Device Tax [35 ILCS 510/1 et seq.]. A specific provision of a particular act contrary to the requirements of the Uniform Penalty and Interest Act will control, as will a specific provision that may impose a penalty in addition to the penalties provided for in the UPIA. Generally, the Uniform Penalty and Interest Act applies to the Motor Fuel Tax Law, with the exception of provisions concerning IFTA (International Fuel Tax Agreement) and MFUT (Motor Fuel Use Tax). [35 ILCS 505/1]

EXAMPLE 1: The Uniform Penalty and Interest Act contains Section 3-4 which sets forth the penalty for failure to file correct information returns. However, Section 5b of the Motor Fuel Tax Law provides for the filing of an information return by bulk users of special fuel and imposes a \$75 penalty for failure to file this informational return. When the Uniform Penalty and Interest Act was enacted, Section 5b of the Motor Fuel Tax Law was not amended to reference the \$5 penalty under the Uniform Penalty and Interest Act. Therefore, the \$75 penalty will continue to apply to a failure to file an information return by a bulk user of special fuel. The \$75 penalty is a penalty "otherwise provided for in a tax Act." (See Section 3-4(a)(1) of the Act)

EXAMPLE 2: Section 3 of the Cigarette Tax Act [35 ILCS 130/3] requires distributors of cigarettes to purchase cigarette tax stamps and affix those stamps to packages of cigarettes before delivering the cigarettes in this State to a purchaser. Section 3 of the Cigarette Tax Act allows distributors to purchase the tax stamps from the Department with post-dated drafts. Section 3 provides that "a distributor's failure to pay any such draft when due, shall also make such distributor liable to the Department for a penalty equal to 25% of the amount of such draft." The 25% penalty is a penalty "otherwise provided for in a tax Act" that is in addition to the penalties imposed under the UPIA.

Section 700.110 Application of the Provisions of the Act and this Part

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a) The Uniform Penalty and Interest Act and this Part are effective January 1, 1994 and the provisions of the Act and this Part apply to the rates of interest for periods on and after the effective date of the Act and this Part.

b) Interest Charged

1) For periods subsequent to the effective date of the Act, the initial rate charged taxpayers by the Department for failure to remit taxes when due is the interest rate in effect at the time the liability to the Department accrued, subject to semi-annual adjustment pursuant to Section 3-2(b) of the UPIA.

EXAMPLE 1: A taxpayer is required to file a monthly return with the Department pursuant to the Automobile Renting Occupation and Use Tax Act [35 ILCS 155/1] on March 20, 1994 for rental receipts from rentals that were received in February 1994. The taxpayer does not remit the tax to the Department when due on March 20, 1994. The interest rate to be charged the taxpayer will be the interest rate in effect on March 20, 1994.

EXAMPLE 2: A taxpayer is required to file fourth quarter 1993 IL-941 with remittance (income tax withholding). The return is filed before the due date of January 30, 1994 but tax is not fully paid until March 15, 1994. The interest rate will be the rate in effect on January 30, 1994 and will accrue through March 15, 1994, when the tax is paid.

EXAMPLE 3: A taxpayer is required to file a first quarter 1994 quarterly withholding return on or before April 30, 1994. The taxpayer has withholding during this period but does not remit the withholding payment to the Department until June 15, 1994. The interest rate to be charged the Taxpayer will be the interest rate in effect on April 30, 1994. This same rate will be charged through June 15, 1994, the date the tax is paid.

EXAMPLE 4: Assume the same fact situation as in Example 3, but payment is not received until August 15, 1994. The interest rate in effect on May 1, 1994 would be charged through June 30, 1994. A new rate would be charged from July 1, 1994 through August 15, 1994, the date the tax is paid.

EXAMPLE 5: A calendar year, corporate taxpayer filed its 1993 corporate income tax return (IL-1120) on October 15, 1994 with a payment for the total tax liability shown on the return attached. No estimated

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payments had been made. The taxpayer would be charged interest on the underpayment of tax from March 16, 1994 through June 30, 1994 at the rate in effect for the first semiannual period of 1994 and from July 1, 1994 through October 15, 1994 at the rate in effect for the second semiannual period of 1994.

- 2) *Interest for periods prior to the effective date of the Act shall be computed at the rates in effect prior to that date.* (Section 3-9 of the Act)

EXAMPLE 1: A taxpayer was required to file, but did not file, a return with the Department under the Retailers' Occupation Tax Act [35 ILCS 120/1 et seq.] on or before August 31, 1981 for the July 1981 month liability period. The taxpayer was audited and a liability was assessed. The interest rate charged the taxpayer on this liability was 1% per month prior to September 17, 1981, and at the rate of 2% per month on and after September 17, 1981 and prior to January 1, 1987; and at the rate of 1.25% per month on and after January 1, 1987 and prior to January 1, 1994; and at the semiannually adjusted daily interest rate imposed pursuant to the Act and these rules from January 1, 1994 through the date the tax is paid.

EXAMPLE 2: A taxpayer was required to file a return under the Retailers' Occupation Tax Act on or before the 20th day of November 1993 for the October 1993 liability period. The return was filed and tax was paid on January 15, 1994. The interest rate charged on the liability was 1.25% per month for November 21, 1993 through December 20, 1993 and 1.25% for December 21, 1993 through December 31, 1993; and at the semiannually adjusted daily interest rate imposed pursuant to the Act and these rules from January 1, 1994 through January 15, 1994, the date the tax was paid.

EXAMPLE 3: A withholding tax agent has income tax withholding liability for the first quarter of 1986 that was due by April 30, 1986, but was not paid until August 15, 1994. The interest rate charged the taxpayer was 10% per annum for the period May 1, 1986 through June 30, 1986, 9% per annum for the period July 1, 1986 through December 31, 1993, and at the semiannually adjusted interest rate imposed pursuant to the Act and these rules from January 1, 1994 through August 15, 1994, the date the tax was paid.

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EXAMPLE 4: A calendar year, corporate taxpayer filed its 1992 return on October 15, 1993. No estimated payments had been made and no payment accompanied the return. The taxpayer would be charged interest at a rate of 9% per annum from March 16, 1993 through December 31, 1993 and at the semiannual adjusted rate imposed pursuant to the Act and this Part from January 1, 1994 through the date paid.

- c) *Penalties shall be imposed at the rate and in the manner in effect at the time the tax liability became due.* (Section 3-9 of the Act)

EXAMPLE 1: A retailer is required to file returns under the Retailers' Occupation Tax Act on a monthly basis, and is required to remit payment of the tax to the Department on a monthly basis. Tax is due from the retailer for sales made during the month of December 1993 on the twentieth day of January 1994. Penalties imposed for late payment or non-payment of the tax due shall be the penalties imposed at the rate in effect on January 20, 1994, the time the tax liability became due.

EXAMPLE 2: A retailer is required to file returns under the Retailers' Occupation Tax Act on a monthly basis, and is required to remit payment of the tax to the Department on a monthly basis. Tax is due from the retailer for sales made during the month of November 1993 on the twentieth day of December 1993. However, the taxpayer does not file a return or pay tax for this period until January 15, 1994. Penalties imposed for failure to file the tax return when due and failure to pay tax when due shall be the penalties imposed at the rates in effect on December 20, 1993; the time the tax liability became due.

EXAMPLE 3: A corporate taxpayer has a federal tax year based on its fiscal year. Its federal income tax return (1120), and by virtue of IITA Section 505(a)(1), its Illinois income tax return (IL-1120), are both due on November 15. In 1993, the taxpayer is granted a 7 month extension of time in which to file its Illinois return. As a result, taxpayer's state return is due June 15, 1994. Taxpayer does not comply with IITA Section 602 and make payment of the amount of its properly estimated tax for the taxable year on November 15, 1993, nor does taxpayer file its IL-1120 when due on June 15, 1994. Penalties imposed for failure to file the tax return when due and for failure to pay tax when due shall be the penalties imposed at the rates in effect on November 15, 1993, the time the tax liability became due.

EXAMPLE 4: A calendar year, corporate taxpayer files its 1993 IL-1120 on November 15, 1994 with a payment for the

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total amount of tax liability attached. Estimated payments were made throughout 1993 on the dates required by Section 803 of the Illinois Income Tax Act, but the taxpayer remitted only 75% of the estimated tax due for each installment. The penalties due for underpayment of estimated tax shall be imposed at the rate and in the manner in effect on March 15, 1994, because until the IL-1120 was due it was not determined that the estimated payments were in fact unpaid.

- d) *Interest shall not be paid on claims filed after the effective date of the Act and this Part except such interest which is paid in accordance with the Act. (Section 3-9 of the Act)*

EXAMPLE 1: A taxpayer files a claim for credit with the Department on January 15, 1994 for an overpayment of Use Tax. The overpayment occurred in October 1992 when the taxpayer self-assessed tax on a purchase of manufacturing machinery and equipment from an unregistered out-of-state retailer and then remitted the tax directly to the Department. The credit is issued on February 15, 1994. Interest shall be paid at the rate of 1% per month for the period from October 1992 through December 31, 1993; and at the semiannually adjusted interest rate imposed pursuant to the Act and these rules from January 1, 1994 through February 15, 1994, the date on which the claim was issued by the Department.

EXAMPLE 2: An individual taxpayer files his IL-1040 return on April 10, 1993. On May 1, 1994 the taxpayer files a claim for refund. If the claim for refund is approved, the taxpayer will be entitled to interest from April 16, 1993 through December 31, 1993, at an annual rate of 9%, and from January 1, 1994 through the date the refund was issued at the semiannually adjusted interest rate under the UPIA.

SUBPART B: INTEREST

Section 700.200 Interest Paid and Interest Charged

Section 3-2 of the Act and this Part govern interest paid taxpayers and interest charged taxpayers by the Department.

Section 700.210 Interest Rate Calculation

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- a) The rate of interest to be paid to taxpayers and to be charged taxpayers is the underpayment rate established under Section 6621 of the Internal Revenue Code. (Section 3-2(a) of the Act)
- b) The underpayment rate is the sum of the Federal short-term rate plus 3 percentage points. The federal short-term rate is the rate determined by the Secretary of the Treasury based upon the average market yield (during any one month period selected by the Secretary of the Treasury and ending the calendar month in which the determination is made) on outstanding marketable obligations of the United States with remaining periods of maturity of 3 years or less.
- c) *The interest rate shall be adjusted on a semiannual basis, on January 1 and July 1, based upon the underpayment rate going into effect on that January 1 or July 1 under Section 6621 of the Internal Revenue Code. (Section 3-2(b) of the Act)*
- d) The Department will announce the interest rate and the semiannual adjustments of the interest rate to the public by publication in the Illinois Register and the State newspaper. Taxpayers may also contact the Department's Taxpayer Information Division for interest rate information.

Section 700.220 Interest Charged Taxpayers

- a) *Interest shall be simple interest calculated on a daily basis. Interest shall accrue upon tax and penalty due. If notice and demand is made for the payment of any amount of tax due and if the amount due is paid within 21 days after the date of such notice and demand, interest under this Section on the amount so paid shall not be imposed for the period after the date of the notice and demand. (Section 3-2(c) of the Act)*

- b) Interest on tax shall accrue from the due date of the tax without regard to extensions of time for filing of returns.

- c) Interest on any penalty shall accrue from the date the penalty is imposed.

EXAMPLE 1: A taxpayer was required to file a return under the Retailers' Occupation Tax Act on or before February 20, 1994 for the January 1994 liability period. The return was filed and tax was paid on May 25, 1994. An assessment will be issued with interest calculated at the semiannually adjusted daily rate pursuant to the Act and this Part on the tax due and penalty assessed from

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February 21, 1994 through May 25, 1994, the date the tax was paid.

EXAMPLE 2: A taxpayer was required to file a return under the Retailers' Occupation Tax Act on or before December 20, 1993 for the November 1993 liability period. The return was filed and tax was paid on May 25, 1994. An assessment will be issued with interest calculated at the 1.25% per month or fraction of month rate from December 21, 1993 to December 31, 1993 and at the semiannually adjusted daily rate imposed pursuant to the Act and these rules on the tax due, from January 1, 1994 through May 25, 1994, the date the tax was paid. No interest shall be charged or accrued on the penalty assessed since the due date of the tax was before the effective date of the Uniform Penalty and Interest Act.

EXAMPLE 3: A taxpayer was required to make accelerated payments of the Public Utilities Tax on the 7th, 15th, 22nd and 31st of January 1994. Each payment should have been \$3000. The taxpayer did not make a payment on the 31st day of January, but the taxpayer did pay \$3000 with the monthly return which was filed, when due, on February 15, 1994. The taxpayer will be charged a 15% late payment penalty because the last accelerated payment was not paid when due. An assessment will be issued with interest calculated on the tax and penalty from February 1, 1994 through February 15, 1994, when the payment was received.

EXAMPLE 4: A corporate calendar year taxpayer (C corporation) files a return under the IITA on March 15, 1994 for its 1993 taxable year. The corporation was liable for, but did not make, any estimated payments for the taxable year. The tax liability reported on the IL-1120 was paid in full when the return was filed. Upon the filing of the return the corporation will be assessed a late payment penalty for failure to make proper quarterly estimated payments. Interest on the late payment penalty will begin to accrue on the original due date of the return and will continue to accrue until the date paid.

EXAMPLE 5: A corporate, calendar-year taxpayer files a return under the IITA on March 15, 1994 for its 1993 taxable year. The corporation properly made all estimated payments and paid the remainder of its tax liability when the return was filed. In 1997 an audit is completed on the corporation's 1993 return and additional liability is proposed. The corporation agrees to the audit results but does not pay the liability until 30 days after the Notice and Demand for payment is issued. A late payment penalty will be assessed on the audit liability and interest will

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accrue on the penalty from the original due date of the 1993 return until the date the penalty is paid.

Section 700.230 Interest Paid Taxpayers on Overpayments

a) *No interest shall be paid upon any overpayment of tax if the overpayment is refunded or a credit approved within 90 days after the last date prescribed for filing the original return, or within 90 days of the receipt of the processable return, or within 90 days after the date of overpayment, whichever is latest, as determined without regard to processing time by the Comptroller or without regard to the date on which the credit is applied to the taxpayer's account. (Section 3-2 of the Act)*

1) The reference to "credit" in Section 3-2 of the UPIA, and throughout this Section, is to claims for credit granted under the various tax acts. Under the claim for credit procedures, upon the filing of an amended return for the period at issue, if the return demonstrates overpayment of tax, a credit memorandum is issued to the taxpayer. This credit may then be applied to liabilities, or transferred with the permission of the Department.

2) Under Section 3 of the Retailers' Occupation Tax Act, the Department has been granted the authority to issue verified credits. A verified credit is an amount of tax overpaid in a prior period that may be rolled over and applied to a tax liability. The verified credit mechanism authorizes this procedure without the necessity of the formalities involved in the claim for credit procedures. Interest is not paid on verified credits. They appear on the Statement of Account (SOA).

b) For purposes of this Section, Section 3-2 of the UPIA provides that the date of overpayment shall mean the date tax was paid, the original due date of the return or the date a processable return was received, whichever is later.

1) Where a return is unprocessable, and the Department issues a notice of that fact to the taxpayer within 90 days of the filing of the unprocessable return or within 90 days of the due date (whichever is later), interest will be allowed on any overpayment only from the date the return was made processable by the taxpayer if the refund or claim for credit on the overpayment is not approved within 90 days of the date on which the return was made processable.

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2) Where a return is unprocessable and notice of that fact is not given to the taxpayer by the Department within 90 days of the filing of the unprocessable return, interest will be allowed from the latter of the date the tax was paid, the original due date of the return or the date the unprocessable return was originally received until the date of notice to the taxpayer by the Department that the return is unprocessable. Additional interest will be allowed from the date the return was made processable until the date the refund or claim for credit on the overpayment is approved, but only if the refund or claim for credit is not approved within 90 days of the date the return was made processable by the taxpayer. (See subsection (f) below)

c) For purposes of calculating interest on overpayments of tax, a processable return is a return that;

- 1) is in the form prescribed or approved by the Department;
- 2) is signed by the person authorized by law; and
- 3) contains all information, schedules, and support documents necessary to determine the tax due and to make allocations of tax as prescribed by law. (Section 3-2 of the Act)

d) Any unprocessable return which is not corrected and made processable within the time period identified on the Department's notice will be considered a nonfiled return, subject to any and all applicable penalties. Being considered a nonfiler for any given period will also result in an extended or open time period for issuance of a Notice of Deficiency or Notice of Tax Liability.

e) For the purpose of computing interest, a return shall be deemed processable unless the Department notifies the taxpayer that the return is not processable within 90 days after the receipt of the return; however, interest shall not accumulate for the period following this date of notice. (Section 3-2 of the Act) Notice by the Department must be in writing and is effective on the date mailed to the taxpayer at the last known address for the taxpayer according to Department records.

f) Interest on amounts refunded or credited pursuant to the filing of an amended return or claim for refund shall be determined from the due date of the original return or the date of overpayment, whichever is later, to the date of the payment by the Department without regard to processing time by the Comptroller or the date of credit by the Department or without regard to the date on which the credit is applied to the taxpayer's account. (Section 3-2 of the Act) Interest on

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overpayments due pursuant to the filing of an amended return or claim for credit will be allowed as specified in this Section and subsection (b) except:

- 1) that interest will be allowed whether or not the overpayment is approved within the 90 day period (except if the refund or credit is issued within 90 days of receipt of the original processable return or overpayment (see subsection (a) above); or
- 2) If a claim for refund relates to an overpayment attributable to a net loss carryback as provided by Section 207 of the Illinois Income Tax Act, the date of overpayment shall be the last day of the taxable year in which the loss was incurred. (Section 3-2 of the Act) In this case interest will be allowed only from the last day of the taxable year in which the loss was incurred.

g) If the Department notifies the taxpayer that a return is unprocessable later than 90 days from the date the return is received, the Department will only be required to pay interest from the due date of the original return to the date of the Department's notice to the taxpayer that the return is unprocessable.

EXAMPLE 1: An IL-1120 reflecting a refund of \$10,000 for the taxable year ending December 31, 1994 is filed on March 15, 1995. On June 1, 1995 notice is given that the return is not processable. The taxpayer responds on July 1, 1995 with information suitable to process the return. If a refund is approved by October 1, 1995, no interest will be allowed because notice was given within 90 days of the date the return was received and the refund was approved within 90 days of the date the return was made processable.

EXAMPLE 2: Same facts as in the preceding example except that notice was not given until June 16, 1995. In this case, interest will be allowed from March 15, 1995 through June 16, 1995.

EXAMPLE 3: Same facts as in example 2 except that the refund is not approved until November 1, 1995. In addition to the interest provided in example 2, interest will also be allowed from July 1, 1995 through November 1, 1995.

SUBPART C: PENALTIES

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Section 700.300 Penalty for Late Filing or Failure to File and Penalty for Late Payment of Tax

- a) A penalty of 5% of the tax required to be shown shall be imposed for failure to file any tax return on or before the due date prescribed for filing determined with regard for any extension of time for filing (penalty for late filing or nonfiling).

- 1) If any unprocessable return is corrected and filed within 21 days after notice by the Department the late filing or nonfiling penalty shall not apply. (Section 3-3(a) of the Act) The unprocessable return must have been filed on or before the due date prescribed for filing of that return, with regard for any extension of filing. In other words, a taxpayer may not attempt to avoid the 5% penalty by the late filing of an unprocessable return which is then corrected within 21 days of notice by the Department.

- 2) A return, for purposes of the imposition of this penalty, is any return required by a tax Act to be filed with the Department that is not an information return as that term is defined in Section 3-4(c) of the Act.

EXAMPLE 1: A withholding agent files Form IL-941 (Employer's Quarterly Illinois Withholding Tax Return) for third quarter 1994 on November 1, 1994. The total Illinois tax withheld is \$500,000. The form was due on October 31, 1994. A late payment filing penalty is imposed as follows: Total Illinois tax withheld (\$500,000) times the 5% late filing penalty equals \$25,000.

EXAMPLE 2: A withholding agent files Form IL-W-3 (Reconciliation of Illinois Income Tax Withheld and Transmittal of Income and Tax Statements) for tax year 1993 on March 1, 1994. The total Illinois tax withheld is \$1,000,000. The form was due on February 28, 1994. A late filing penalty is imposed as follows: Total Illinois tax withheld (\$1,000,000) times the 5% late filing penalty is \$50,000.

- 3) If a penalty for late filing or nonfiling is imposed in addition to a penalty for late payment, the total penalty due shall be the sum of the late filing penalty and the applicable late payment penalty (Section 3-3(a) of the Act).

- b) A penalty of 15% of the tax shown on the return or the tax required to be shown due on the return shall be imposed for failure to pay:

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- 1) the tax shown due on the return on or before the due date prescribed for payment of that tax, an amount of underpayment of estimated tax, or an amount that is reported in an amended return other than an amended return timely filed as required by subsection (b) of Section 506 of the Illinois Income Tax Act (penalty for late payment or nonpayment of admitted liability); or

- 2) the full amount of any tax required to be shown due on a return and which is not shown (penalty for late payment or nonpayment of additional liability), within 21 days after a notice of arithmetic error, notice and demand, or a final assessment is issued by the Department. In the case of a final assessment arising following a protest and hearing, the 21-day period shall not begin until all proceedings in court for review of the final assessment have terminated or the period for obtaining a review has expired without proceedings for a review having been instituted. In the case of a notice of tax liability that becomes a final assessment without a protest and hearing, the penalty provided in this Section shall be imposed at the expiration of the period provided for the filing of a protest. (Section 3-3(b) of the Act).

- c) For purposes of the late payment penalties, the basis of the penalty shall be the tax shown or required to be shown on the return, whichever is applicable, reduced by any part of the tax which is paid on time and by any credit which was properly allowable on the date the return was required to be filed. (Section 3-3(c) of the Act) The amount of this late payment penalty, unlike some late payment penalties that were imposed prior to the adoption of the Uniform Penalty and Interest Act, does not change over time. The late payment penalty is the same whether payment is one day late, or one year late.

- d) A penalty shall be applied to the tax required to be shown even if that amount is less than the tax shown on the return. (Section 3-3(d) of the Act)

EXAMPLE: A rentor of automobiles for periods of one year or less, has tax due under the Automobile Renting Occupation and Use Tax for the rental receipts received during the month of June 1994 on July 20, 1994. The tax shown on the return filed on July 20, 1994 is \$500, but the taxpayer remits no payment of the tax when the return is filed. On August 1, 1994 the taxpayer files an amended return reducing tax liability to \$400 and also remits \$400. Assuming that the \$400 amount shown on the amended return is correct, the taxpayer owes a late payment penalty on \$400, the amount required to be shown on the original return, not the \$500 amount that was shown on the original return.

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- e) If both a subsection (b)(1) penalty and a subsection (b)(2) penalty are assessed against the same return, the subsection (b)(2) penalty shall be assessed against only the additional tax found to be due. (Section 3-3(e) of the Act)

EXAMPLE: A withholding tax agent has tax due for the third quarter of 1994. The return is filed timely, with tax withheld of \$20,000, but on time payments only equal \$15,000 leaving a tax balance due of \$5,000. The late payment penalty applicable on November 1, 1994 is \$750. Full payment of tax is made on March 15, 1995. On October 1, 1997, an audit is completed increasing tax to \$30,000. Additional late payment penalty is \$1500 (\$30,000 minus the original \$20,000 equals \$10,000 tax due times 15% equals \$1500 late payment penalty.) the total late payment penalty is \$2250.

- f) If the taxpayer has failed to file the return, the Department shall determine the correct tax according to its best judgment and information, which amount shall be *prima facie* evidence of the correctness of the tax due. (Section 3-3(f) of the Act)
- g) The time within which to file a return or pay an amount of tax due without imposition of a penalty does not extend the time within which to file a protest to a notice of tax liability or a notice of deficiency. (Section 3-3(g) of the Act)

Section 700.310 Penalty for Failure to File Correct Information Returns

- a) An information return is any return required by a tax Act to be filed with the Department that does not, by law, require the payment of a tax liability. (Section 3-4(c) of the Act) Examples of information returns are the information returns that the Department may require of retailers pursuant to Section 3 of the Retailers' Occupation Tax Act. An information return is not a tax return with a zero balance. For example, the filing of a Form ST-1 by a retailer who had no gross receipts for the period covered by the filing of the return is not an information return. Similarly, the filing of Form IL-941, IL-W-3 or RC-6 is not an information return as defined in Section 3-4(c) of the Act.

- b) Unless otherwise provided in a tax Act, in the case of a failure, described in subsection (c) of this Section, by any person with respect to an information return, that person shall pay a penalty of \$5 for each return or statement with respect to which the failure occurs, but the total amount imposed on that person for all such failures during any calendar year shall not exceed \$25,000. (Section 3-4(a)(1) of the Act)

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- c) The following failures are subject to the \$5 penalty:
- 1) Any failure to file an information return with the Department on or before the required filing date, or
 - 2) Any failure to include all of the information required to be shown on the return or the inclusion of incorrect information. (Section 3-4(a)(2) of the Act)
- d) If any failure described in subsection (c) is corrected within 60 days after the required filing date:
- 1) The penalty imposed by the Act, and quoted in subsection (c) above, shall be reduced by 50%; and
 - 2) The total amount imposed on the person for all such failures during any calendar year which are so corrected shall not exceed 50% of the maximum prescribed in subsection (b)(2). (Section 3-4(b) of the Act)
 - 3) A corrected information return is a return that includes all information required to be included on the return and all the information is correct.
 - 4) A corrected information return will be deemed to have been filed with and received by the Department within 60 days if the date shown by the post office cancellation mark stamped upon the envelope or other appropriate wrapper containing the return is dated within 60 days of the due date of the return, or actual receipt by the Department if deliveries are made by means other than the U.S. Postal Service.

Section 700.320 Penalty for Negligence

- a) If any return or amended return is prepared negligently, but without intent to defraud, and filed, in addition to any penalty imposed under Section 3-3 of this Act, a penalty shall be imposed in an amount equal to 20% of any resulting deficiency.
- b) Negligence includes any failure to make a reasonable attempt to comply with the provisions of any tax Act and includes careless, reckless, or intentional disregard of the law or rules. (Section 3-5 of the Act)
- c) Penalty for negligence shall not apply where an assessment results from a reasonable difference of opinion as to taxability. (Section 3-5 of the Act) A reasonable difference as to taxability may be established

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by evidence that shows that the issue in dispute between the taxpayer and the Department is:

- 1) not resolved by the plain language of the statute;
- 2) an issue about which the Department has not adopted a rule of general applicability;
- 3) an issue about which the Illinois Supreme Court has not ruled and there are inconsistent opinions of the Illinois Appellate Courts.

Section 700.330 Penalty for Fraud

- a) *If any return or amended return is filed with intent to defraud, in addition to any penalty imposed under Section 3-3 of this Act, a penalty will be imposed in an amount equal to 50% of any resulting deficiency.*
- b) *If any claim is filed with intent to defraud, a penalty shall be imposed in an amount equal to 50% of the amount fraudulently claimed for credit or refund. (Section 3-6 of the Act)*
- c) *By way of illustration and not by way of limitation, intent to defraud will be inferred from conduct such as keeping a double set of books, making false entries or alterations, or false invoices of documents, destruction of books or records, concealment of assets or covering up sources of income, handling of one's affairs to avoid compiling the records usual in transactions of the like kind, or any other conduct, the likely effect of which would be to mislead or conceal.*

Section 700.340 Personal Liability Penalty

- a) *Any officer or employee of any taxpayer subject to the provisions of a tax Act administered by the Department who has control, supervision or responsibility of filing returns and making payment of the amount of any trust tax imposed in accordance with that Act and who willfully fails to file the return or make the payment to the Department or willfully attempts in any other manner to evade or defeat the tax shall be personally liable for a penalty equal to the total amount of tax unpaid by the taxpayer including interest and penalties thereon. (Section 3-7(a) of the Act)*
- b) *The term willful means a voluntary, conscious and intentional act on the part of the officer or employee. It may consist of a voluntary, conscious and intentional failure to file the required*

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return or make the payment to the Department or a voluntary, conscious and intentional attempt to take any other action to evade or defeat the tax.

- c) *The Department shall issue a notice of penalty liability for the amount claimed by the Department pursuant to Section 3-7 of the Act. (Section 3-7(b) of the Act)*
- d) *The personal liability imposed by Section 3-7 of the Act shall survive the dissolution of a partnership or corporation.*
- e) *In addition to any other remedy provided for by the laws of this State, and provided that no hearing or proceeding for review is pending, any Section of a tax Act which provides a means for collection of taxes shall in the same manner and to the same extent provide a means for the collection of the penalty imposed by this Section.*
- f) *Officer or employee of any taxpayer includes a member of a partnership. (Section 3-7 of the Act)*
- g) *A trust tax is any tax for which an amount is collected or withheld by a taxpayer from another person, and any tax for which an amount is required to be collected or withheld by a taxpayer from another person, regardless of whether it is in fact collected or withheld. (Section 3-7(f) of the Act)*

SUBPART D: REASONABLE CAUSE**Section 700.400 Reasonable Cause**

- a) *The penalties imposed under the provisions of Sections 3-3, 3-4, and 3-5 of this Act shall not apply if the taxpayer shows that his failure to file a return or pay tax at the required time was due to reasonable cause. Reasonable cause shall be determined in each situation in accordance with rules and regulations promulgated by the Department. (Section 3-8 of the Act)*
- b) *The determination of whether a taxpayer acted with reasonable cause shall be made on a case by case basis taking into account all pertinent facts and circumstances. The most important factor to be considered in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine his proper tax liability and to file and pay his proper liability in a timely fashion.*
- c) *A taxpayer will be considered to have made a good faith effort to determine and file and pay his proper tax liability if he exercised*

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ordinary business care and prudence in doing so. A determination of whether a taxpayer exercised ordinary business care and prudence is dependent upon the clarity of the law or its interpretation and the taxpayer's experience, knowledge, and education. Accordingly, reliance on the advice of a professional does not necessarily establish that a taxpayer exercised ordinary business care and prudence, nor does reliance on incorrect facts such as an erroneous information return.

d) The Department will also consider a taxpayer's filing history in determining whether the taxpayer acted in good faith in determining and paying his tax liability. Isolated computational or transcriptional errors will not generally indicate a lack of good faith in the preparation of a taxpayer's return.

e) Examples of Reasonable Cause. The following non-exclusive list of situations will constitute reasonable cause for purposes of the abatement of penalties:

- 1) Reasonable cause for abatement of penalty will exist if a liability results from amendments made by the Department to regulations or formal administrative policies or positions after the return on which the liability was computed was filed.
- 2) Reasonable cause for abatement may also be based on the death, incapacity or serious illness of the taxpayer (or his tax preparer) or a death or serious illness in his or her immediate family which causes a late filing and payment of tax due. In the case of a corporation, estate, trust, etc., the death, incapacity, or serious illness must have been of an individual having sole authority to file the return (not the individual preparing the return) or make the deposit/payment, or a member of such individual's immediate family.
- 3) An unavoidable absence of a taxpayer (or tax preparer) due to circumstances unforeseeable by a reasonable person may also constitute reasonable cause for purposes of abatement of the penalty. An unavoidable absence does not include a planned absence such as a vacation. In the case of a corporation, estate, trust, etc., the absence must have been of an individual having sole authority to file the return (not the individual preparing the return) or make the deposit/payment.

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4) Factors beyond taxpayer's control such as destruction by fire, other casualty or civil disturbance, of the taxpayer residence or place of business records.

5) Taxpayer mailed the return or payment to the Department in time to reach the Department on or before the due date, given the normal handling of the mail. However, through no fault of the taxpayer, the return or payment was not delivered within the prescribed time period. This fact situation would constitute reasonable cause for abatement of the penalty.

6) Reasonable cause will exist for purposes of abatement of the penalty if a taxpayer makes an honest mistake, such as inadvertently mailing a Department of Revenue check to a local government, another state's Department of Revenue, or to the Internal Revenue Service.

7) An Illinois appellate court decision, a U.S. appellate court decision, or an appellate court decision from another state (provided that the appellate court case in the other state is based upon substantially similar statutory or regulatory law) which supports the taxpayer's position will ordinarily provide a basis for a reasonable cause determination.

SUBPART E: PAYMENT APPLICATION

Section 700.500 Payment Application

- a) *Payments received from a taxpayer shall be applied against the outstanding liability of the taxpayer, or to an agreed portion of the outstanding portion of the outstanding liability, in the following order: the principal amount of the tax, then penalty, and then interest. (Section 3-9 of the Act)*
- b) A taxpayer may direct payment to a particular liability at the time payment is made to the Department. If a taxpayer has multiple liabilities to the Department, either based upon multiple taxes or multiple reporting periods, the taxpayer should identify the liability to which payment is to be directed.
- c) In the absence of direction from the taxpayer as to which of a taxpayer's outstanding liabilities payment is to be made, the Department will direct payments made by taxpayers to the oldest outstanding liability first, with payment directed first to the principal amount of the liability and any excess then directed to penalty and then to interest. If there remain funds after

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application of the payment to the oldest outstanding liability in the manner noted above, the remainder will be directed to the next oldest liability in the same manner.

DEPARTMENT OF REVENUE
NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Use Tax
- 2) Code Citation: 86 Ill. Adm. Code 150
- 3) Section Numbers: Adopted Action:
150.1001 Amendment
150.1415 Amendment
- 4) Statutory Authority: the Use Tax Act [35 ILCS 105] and the Uniform Penalty and Interest Act [35 ILCS 735]
- 5) Effective Date of Amendment(s): January 13, 1994
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this amendment contain incorporations by reference? No
- 8) Date Filed in Agency's Principal Office: January 13, 1994
- 9) Notice of Proposal Published in Illinois Register:
September 24, 1993, Issue 39, 17 Ill. Reg. 15527
- 10) Has ICAR issued a Statement of Objections to these Amendments? No
- 11) Differences between proposal and final version: In response to a suggestion of the Index Division of the Secretary of State we will insert the SUBPART M heading before Section 150.1415 of the Illinois Register version of the adopted rule.

In response to a suggestion of the staff of the Joint Committee on Administrative Rules, a comma was inserted in the date "June 15, 1994" in the example accompanying Section 150.1415(a).
- 12) Have all the changes agreed upon by the agency and ICAR been made as indicated in the agreement letter issued by ICAR? No agreement letter was issued by ICAR.
- 13) Will this amendment replace an emergency amendment currently in effect? No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Amendment(s): This rulemaking amends the Department's rules concerning the Use Tax Act to include references to the Uniform Penalty and Interest Act. The Uniform Penalty and Interest Act is effective January 1, 1994. In a separate rulemaking, the Department has proposed a new Part (86 Ill. Adm. Code 700) that

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NOTICE OF ADOPTED AMENDMENTS

provides detailed rules on the new Uniform Penalty and Interest Act. These amendments to the Use Tax rules cross-reference the new Uniform Penalty and Interest Act and the new rules as appropriate.

- 16) Information and questions regarding this adopted amendment shall be directed to:

Keith W. Staats
Staff Attorney
Legal Services Bureau
Illinois Department of Revenue
101 West Jefferson
Springfield, Illinois 62794
Phone: (217) 782-7054

The full text of the Adopted Amendment begins on the next page:

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT(S)

TITLE 86: REVENUE

CHAPTER I: DEPARTMENT OF REVENUE

PART 150
USE TAX

SUBPART A: NATURE OF THE TAX

Section	Description of the Tax
150.101	Rate and Base of Tax
150.105	How To Compute Depreciation
150.110	How to Determine Effective Date
150.115	Effective Date of New Taxes
150.120	Relation of Use Tax to Retailers' Occupation Tax
150.125	Accounting for the Tax
150.130	How to Avoid Paying Tax on Use Tax Collected From the Purchaser
150.135	

SUBPART B: DEFINITIONS

Section	General Definitions
150.201	

SUBPART C: KINDS OF USES AND USERS NOT TAXED

Section	Cross References
150.301	Effect of Limitation that Purchase Must be at Retail From a Retailer to be Taxable
150.305	Interim Use and Demonstration Exemptions
150.306	Exemptions to Avoid Multi-State Taxation
150.310	Non-resident Exemptions
150.315	Meaning of "Acquired Outside This State"
150.320	Charitable, Religious, Educational and Senior Citizens Recreational Organizations as Buyers
150.325	Governmental Bodies as Buyers
150.330	

SUBPART D: COLLECTION OF THE USE TAX FROM USERS BY RETAILERS

Section	Collection of the Tax by Retailers From Users
150.401	Tax Collection Brackets for a 2-1/4% Rate of Tax (Repealed)
150.405	Tax Collection Brackets for a 2-1/2% Rate of Tax (Repealed)
150.410	Tax Collection Brackets for a 2-3/4% Rate of Tax (Repealed)
150.415	Tax Collection Brackets for a 3% Rate of Tax (Repealed)
150.420	Tax Collection Brackets for a 3-1/8% Rate of Tax (Repealed)
150.425	Tax Collection Brackets for a 3-1/4% Rate of Tax (Repealed)
150.430	Tax Collection Brackets for a 3-1/2% Rate of Tax (Repealed)
150.435	Tax Collection Brackets for a 3-1/2% Rate of Tax (Repealed)
150.440	Tax Collection Brackets for a 3-1/2% Rate of Tax (Repealed)

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150.445 Tax Collection Brackets for a 3-3/4% Rate of Tax (Repealed)
 150.450 Tax Collection Brackets for a 4% Rate of Tax (Repealed)
 150.455 Tax Collection Brackets for a 4-1/8% Rate of Tax (Repealed)
 150.460 Tax Collection Brackets for a 4-1/4% Rate of Tax (Repealed)
 150.465 Tax Collection Brackets for a 4-1/2% Rate of Tax (Repealed)
 150.470 Tax Collection Brackets for a 4-3/4% Rate of Tax (Repealed)
 150.475 Tax Collection Brackets for a 5% Rate of Tax (Repealed)
 150.480 Tax Collection Brackets for a 5-1/8% Rate of Tax (Repealed)
 150.485 Tax Collection Brackets for a 5-1/4% Rate of Tax (Repealed)
 150.490 Tax Collection Brackets for a 5-1/2% Rate of Tax (Repealed)
 150.495 Tax Collection Brackets for a 5-3/4% Rate of Tax (Repealed)
 150.500 Tax Collection Brackets for a 6% Rate of Tax (Repealed)
 150.505 Optional 1% Schedule (Repealed)
 150.510 Exact Collection of Tax Required When Practicable
 150.515 Prohibition Against Retailer's Representing That He Will Absorb The Tax
 150.520 Display of Tax Collection Schedule
 150.525 Methods for Calculating Tax on Sales of Items Subject to Differing Tax Rates

SUBPART E: RECEIPT FOR THE TAX

Section
150.601 Requirements

SUBPART F: SPECIAL INFORMATION FOR TAXABLE USERS

Section
150.701 When and Where to File a Return
 150.705 Use Tax on Items that are Titled or Registered in Illinois
 150.710 Procedure in Claiming Exemption from Use Tax
 150.715 Receipt for Tax or Proof of Exemption Must Accompany Application for Title or Registration
 150.716 Display Certificates for House Trailers
 150.720 Issuance of Title or Registration Where Retailer Fails or Refuses to Remit Tax Collected by Retailer from User
 150.725 Direct Payment of Tax by User to Department on Intrastate Purchase Under Certain Circumstances
 150.730 Direct Reporting of Use Tax to Department by Registered Retailers

SUBPART G: REGISTRATION OF OUT-OF-STATE RETAILERS

Section
150.801 When Out-of-State Retailers Must Register and Collect Use Tax
 150.805 Voluntary Registration by Certain Out-of-State Retailers
 150.810 Incorporation by Reference

SUBPART H: RETAILERS' RETURNS

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT(S)

Section
150.901 When and Where to File
 150.905 Deduction for Collecting Tax
 150.910 Incorporation by Reference
 150.915 Itemization of Receipts from Sales and the Tax Among the Different States from Which Sales are Made into Illinois

SUBPART I: PENALTIES, INTEREST AND PROCEDURES

Section
150.1001 General Information

SUBPART J: TRADED-IN PROPERTY

Section
150.1101 General Information

SUBPART K: INCORPORATION OF ILLINOIS RETAILERS' OCCUPATION TAX REGULATIONS BY REFERENCE

Section
150.1201 General Information

SUBPART L: BOOKS AND RECORDS

Section
150.1301 Users' Records
 150.1305 Retailers' Records
 150.1310 Use of Signs to Prove Collection of Tax as a Separate Item
 150.1315 Consequence of Not Complying with Requirement of Collecting Use Tax Separately from the Selling Price
 150.1320 Incorporation by Reference

SUBPART M: CLAIMS TO RECOVER ERRONEOUSLY PAID TAX

Section
150.1401 Claims for Credit--Limitations--Procedure
 150.1405 Disposition of Credit Memoranda by Holders Thereof
 150.1410 Refunds
 150.1415 Interest

TABLE A Tax Collection Brackets

AUTHORITY: Implementing the Use Tax Act (35 ILCS .05) and authorized by Section 39b28 of the Civil Administrative Code of Illinois (20 ILCS 2505/39b28).

SOURCE: Adopted August 1, 1955; amended at 4 Ill. Reg. 24, p. 553, effective June 1, 1980; amended at 5 Ill. Reg. 5351, effective April 30, 1981; amended at

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5 Ill. Reg. 11072, effective October 6, 1981; codified at 6 Ill. Reg. 9326; amended at 8 Ill. Reg. 3704, effective March 12, 1984; amended at 8 Ill. Reg. 7278, effective May 11, 1984; amended at 8 Ill. Reg. 8623, effective June 5, 1984; amended at 11 Ill. Reg. 6275, effective March, 20, 1987; amended at 14 Ill. Reg. 6835, effective April 19, 1990; amended at 15 Ill. Reg. 5861, effective April 5, 1991; emergency amendment at 16 Ill. Reg. 14889, effective September 9, 1992, for a maximum of 150 days; amended at 17 Ill. Reg. 1947, effective February 2, 1993; amended at 18 Ill. Reg. _____, effective January 13, 1994.

SUBPART I: PENALTIES, INTEREST AND PROCEDURES

Section 150.1001 General Information

All civil penalties, provisions concerning interest and procedures (such as the making of assessments, the venue and mode of conducting hearings, subpoenas, matters pertaining to judicial review and other procedural subjects), together with statutes of limitation (except that these apply from the date when the tax is due rather than from the date when the gross receipts are received), are the same under the Use Tax Act as under the Illinois Retailers' Occupation Tax Act. For information concerning civil penalties and interest see the Uniform Penalty and Interest Act [35 ILCS 735/3] and 86 Ill. Adm. Code 700. For information concerning criminal penalties, see Section 14 of the Use Tax Act.

(Source: Amended at 18 Ill. Reg. _____, effective January 13, 1994.)

Section 150.1415 Interest

- a) Any credit or refund that is allowed under the Act shall bear interest at the rate of 1% per month or fraction thereof from the date when the erroneous payment for which the credit or refund is being allowed was made to the Department until the credit memorandum is issued or the refund is paid, until January 1, 1994. Interest shall not be paid on claims filed after the effective date of the Uniform Penalty and Interest Act and 86 Ill. Adm. Code 700 except such interest which is paid in accordance with the Act. [Section 3-9 of the Uniform Penalty and Interest Act] [35 ILCS 735/3-9]

EXAMPLE: A taxpayer files a claim for credit with the Department on January 15, 1994 for an overpayment of Use Tax. The overpayment occurred in October 1992 when the taxpayer self-assessed tax on a purchase of manufacturing machinery and equipment from an unregistered out-of-state retailer and then remitted the tax directly to the Department. The credit memorandum is issued on June 15, 1994. Interest shall be paid at the rate of 1% per month for the period from October 1992 through December 31, 1993; and at the semiannually adjusted interest rate imposed pursuant to the Act and these rules from January 1, 1994 through June 15, 1994, the date on which the

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credit memorandum was issued by the Department.

b) No interest will be allowed if the overpayment is found by the Department to have been made deliberately for the purpose of drawing interest, or if the overpayment is ascertained not to have been bona fide for some other reason.

- c) When a claim that is allowed is paid by means of a credit memorandum instead of by means of a cash refund, the claim will be considered to have been paid when the credit memorandum is issued by the Department to the claimant, and no interest will be allowed or paid by the Department for any period subsequent to that, even if the claimant does not use or assign the credit memorandum immediately after it is issued.

(Source: Amended at 18 Ill. Reg. _____, effective January 13, 1994.)

NOTICE OF ADOPTED AMENDMENT(S)

1) Heading of Part: Issuance of Licenses

2) Code Citation: 92 Ill. Adm. Code 1030

3) <u>Section Numbers</u>	<u>Adopted Action</u>
1030.97	New Section

4) Statutory Authority: Section 2-104(b) of the Illinois Vehicle Title and Registration Law of the Illinois Vehicle Code (Ill. Rev. Stat. 1991, ch. 95 1/2, par. 2-104(b)) [625 ILCS 5/2-104(b)] and Section 6-104(a) of the Illinois Driver Licensing Law of the Illinois Vehicle Code (Ill. Rev. Stat. 1991, ch. 95 1/2, par. 6-104(a)) [625 ILCS 5/6-104(b)].

5) Effective Date of Amendments: January 14, 1994

6) Does this rulemaking contain an automatic repeal date? No

7) Does this amendment contain incorporations by reference? No

8) Date Filed in Agency's Principal Office: January 14, 1994

9) Notice of Proposal Published in Illinois Register: 17 Ill. Reg. 15803 (October 1, 1993)

10) Has JCAR Issued a Statement of Objections to this Rule? No

11) Differences between proposal and final version:

Per suggestions from the Joint Committee on Administrative Rules, the following changes were made:

To substitute "shall" in lieu of "may" in Section 1030.97(a)(now(b)); to add a new subsection (a) which includes definitions for "Invalidation", "Law Enforcement", and "Secretary of State Employee"; to add a new subsection (c); and relettering the remaining paragraphs of this Section.

12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the Agreement Letter issued by JCAR? Yes.

13) Will this rule replace any Emergency Rule(s) currently in effect? No

14) Are there any other amendments pending on this Part? No.

15) Summary and Purpose of Rule: This proposed rulemaking sets forth the procedure for invalidating a driver's license or permit when the holder voluntarily surrenders the license; or the Secretary receives a certified court order indicating the holder is to refrain from driving; or upon the death of the holder.

NOTICE OF ADOPTED AMENDMENT(S)

16) Information and answers to questions regarding this Adopted Rule should be directed to:

Mark A. Novak
Assistant Counsel to the Secretary
2701 S. Dirksen Parkway
Springfield, IL 62723
Tel: 217/782-5356

The full text of the Adopted Rule begins on the next page.

SECRETARY OF STATE

NOTICE OF ADOPTED AMENDMENT(S)

TITLE 92: TRANSPORTATION
CHAPTER II: SECRETARY OF STATE

PART 1030

ISSUANCE OF LICENSES

Section	
1030.10	What Persons Shall Not be Licensed or Granted Permits
1030.11	Procedure for Obtaining a Driver's License
1030.12	Driver's License Medical Advisory Board
1030.15	Cite for Re-examination
1030.16	Physical and Mental Evaluation
1030.17	Errors in Issuance of Driver's License/Cancellation
1030.18	Medical Criteria Affecting Driver Performance
1030.20	Classification of Drivers-References
1030.30	Classification Standards
1030.40	Fifth Wheel Equipped Trucks
1030.50	Bus Driver's Authority, Religious Organization
1030.55	Commuter Van Driver Operating a For-Profit Ridesharing Arrangement
1030.60	Employer Certification Program
1030.63	Religious Exemption for Social Security Numbers
1030.65	Instruction Permits
1030.70	Driver's License Testing/Vision Screening
1030.75	Driver's License Testing/Vision Screening With Vision Aid
	Arrangements Other Than Standard Eye Glasses or Contact Lens(es)
1030.80	Driver's License Testing/Written Test
1030.81	Endorsements
1030.84	Vehicle Inspection
1030.85	Driver's License Testing/Road Test
1030.86	Multiple Attempts/Road Test
1030.88	Exemption of Facility Administered Road Test
1030.89	Temporary Licenses
1030.90	Requirement For Photograph and Signature of Licensee On Driver's License
1030.91	Disabled Person/Handicapped Identification Card
1030.92	Restrictions
1030.93	Restricted Local Licenses
1030.94	Duplicate or Corrected Driver's License or Instruction Permit
1030.95	Diplomatic and Consular Licenses
1030.97	Invalidation of a Driver's License or Permit
1030.100	Anatomical Gift Donor
1030.110	Emergency Medical Information Card
1030.115	Change-of-Address
1030.120	Issuance of a Probationary License
1030.130	Grounds for Cancellation of a Probationary License
1030.	Appendix A Questions Asked of a Driver's License Applicant
1030.	Appendix B Acceptable Identification Documents

AUTHORITY: Implementing Article I of the Illinois Driver Licensing Law of the Illinois Vehicle Code (Ill. Rev. Stat. 1991, ch. 95 1/2, par. 6-100 et seq.)

SECRETARY OF STATE

NOTICE OF ADOPTED AMENDMENT(S)

[625 ILCS 5/6-100 et seq.] and authorized by Section 2-104(b) of the Illinois Vehicle Title and Registration Law of the Illinois Vehicle Code (Ill. Rev. Stat. 1991, ch. 95 1/2, par. 2-104(b)) [625 ILCS 5/2-104(b)].

SOURCE: Filed March 30, 1971; amended at 3 Ill. Reg. 7, p. 13, effective April 2, 1979; amended at 4 Ill. Reg. 27, p. 422, effective June 23, 1980; amended at 6 Ill. Reg. 2400, effective February 10, 1982; codified at 6 Ill. Reg. 12674; amended at 9 Ill. Reg. 2716, effective February 20, 1985; amended at 10 Ill. Reg. 303, effective December 24, 1985; amended at 10 Ill. Reg. 18182, effective October 14, 1986; amended at 11 Ill. Reg. 9331, effective April 28, 1987; amended at 11 Ill. Reg. 18292, effective October 23, 1987; amended at 12 Ill. Reg. 3027, effective January 14, 1988; amended at 12 Ill. Reg. 13221, effective August 1, 1988; amended at 12 Ill. Reg. 16915, effective October 1, 1988; amended at 12 Ill. Reg. 19777, effective November 15, 1988; amended at 13 Ill. Reg. 5192, effective April 1, 1989; amended at 13 Ill. Reg. 7808, effective June 1, 1989; amended at 13 Ill. Reg. 12880, effective July 19, 1989; amended at 13 Ill. Reg. 12978, effective July 19, 1989; amended at 13 Ill. Reg. 13898, effective August 22, 1989; amended at 13 Ill. Reg. 15112, effective September 8, 1989; amended at 13 Ill. Reg. 17087, effective October 16, 1989; amended at 13 Ill. Reg. 17095, effective October 18, 1989; amended at 14 Ill. Reg. 4570, effective March 8, 1990; amended at 14 Ill. Reg. 4908, effective March 9, 1990; amended at 14 Ill. Reg. 5183, effective March 21, 1990; amended at 14 Ill. Reg. 8707, effective May 16, 1990; amended at 14 Ill. Reg. 9246, effective May 16, 1990; amended at 14 Ill. Reg. 9498, effective May 17, 1990; amended at 14 Ill. Reg. 9498, effective May 17, 1990; amended at 14 Ill. Reg. 10111, effective June 12, 1990; amended at 14 Ill. Reg. 10510, effective June 18, 1990; amended at 14 Ill. Reg. 12077, effective July 5, 1990; amended at 14 Ill. Reg. 15487, effective September 10, 1990; amended at 15 Ill. Reg. 15783, effective October 18, 1991; amended at 16 Ill. Reg. 2182, effective January 24, 1992; emergency amendment at 16 Ill. Reg. 12228, effective July 26, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 18087, effective November 17, 1992; emergency amendment at 17 Ill. Reg. 1219, effective January 13, 1993; amended at 17 Ill. Reg. 2025, effective February 1, 1993; amended at 17 Ill. Reg. 7065, effective May 3, 1993; amended at 17 Ill. Reg. 8275, effective May 24, 1993; amended at 17 Ill. Reg. 8522, effective May 27, 1993; amended at 17 Ill. Reg. 19315, effective October 22, 1993; amended at 18 Ill. Reg. , effective January 14, 1994 .

Section 1030.97 Invalidation of a Driver's License or Permit

(a) For purposes of this Section the following definitions shall apply:

"Invalidation" - the withdrawal by consent, court order or death of the holder of the validation of a person's license or permit in accordance with Section 6-100 et seq. of the Illinois Driver Licensing Law of the Illinois Vehicle Code (625 ILCS 5/6)

"Law Enforcement" - a police officer, sheriff, coroner, municipal prosecutor, or state's attorney

NOTICE OF ADOPTED AMENDMENT(S)

"Secretary of State Employee" - all supervisory personnel within the Department of Driver Services

(b) The Secretary of State shall invalidate a driver's license or permit when:

(1) The holder voluntarily surrenders the license or permit and declares his/her intention to do so in writing to the Secretary; or

(2) The Secretary receives a certified court order indicating the holder is to refrain from driving; or

(3) Upon the death of the holder.

(c) A driver's license or permit invalidated may be reinstated in the same manner as prescribed by Sections 6-114 and 6-115 of the Illinois Driver Licensing Law of the Illinois Vehicle Code (625 ILCS 5/6-114 and 5/6-115).

(d) A driver's license or permit invalidated under this Section shall nullify the holder's driving privileges, except upon the death of the holder.

(e) A license or permit invalidated upon the death of the holder may be released to a relative of the decedent provided the actual license or permit bears a readily identifiable designation evidencing invalidation.

(f) To invalidate a license or permit a hole shall be punched through the issuance date and the expiration date of the license or permit by an employee of the Secretary of State, a law enforcement officer, or a coroner.

(g) The Secretary of State employee, law enforcement officer, or coroner who invalidates a license or permit, shall make a report of the matter to the Secretary of State on a form provided or approved by the Secretary of State.

(Source: Added at 18 Ill. Reg. _____, effective January 14, 1994)

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

NOTICE OF EMERGENCY RULES

1) Heading of Part: Affordable Housing Bond Program

2) Code Citation: 47 Ill. Adm. Code 365

3) Section Numbers:

365.101	<u>Emergency Action:</u>	New Section
365.102		New Section
365.103		New Section
365.104		New Section
365.105		New Section
365.106		New Section
365.107		New Section
365.108		New Section
365.109		New Section
365.110		New Section
365.111		New Section
365.112		New Section
365.113		New Section
365.114		New Section
365.115		New Section
365.201		New Section
365.202		New Section
365.203		New Section
365.204		New Section
365.301		New Section
365.302		New Section
365.303		New Section
365.304		New Section
365.305		New Section
365.401		New Section
365.402		New Section
365.403		New Section
365.404		New Section
365.405		New Section
365.501		New Section
365.502		New Section
365.503		New Section
365.504		New Section
365.505		New Section
365.506		New Section
365.507		New Section
365.508		New Section
365.601		New Section
365.602		New Section
365.603		New Section
365.604		New Section
365.701		New Section
365.702		New Section

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

NOTICE OF EMERGENCY RULES

365.703 New Section
 365.704 New Section
 365.801 New Section
 365.901 New Section
 365.1001 New Section
 365.1002 New Section
 365.1101 New Section
 365.1102 New Section
 365.1103 New Section
 365.1104 New Section
 365.1201 New Section
 365.1202 New Section
 365.1203 New Section
 365.1204 New Section
 365.1205 New Section

4) Statutory Authority: Sections 3805/7.19 and 3805/7.25 of the Illinois Housing Development Act (20 ILCS 3805/7.19 and 20 ILCS 3805/7.25 et seq. and Sections 65/4 and 65/7(e) of the Illinois Affordable Housing Act (310 ILCS 65/4 and 310 ILCS 65/7)

5) Effective Date of Rules: January 12, 1994.

6) Date Filed in Agency's Principal Office: December 22, 1993.

7) Reason for Emergency: The Illinois General Assembly recently amended the Illinois Affordable Housing Act (the "Act") and the Illinois Housing Development Act to address the severe shortage of affordable, decent, safe and sanitary housing for Illinois' low and very-low income persons. The desperate need for affordable housing requires that this part be submitted on an emergency basis.

8) A Complete Description of the Subjects and Issues Involved: These emergency rules establish the procedures for operation of the Affordable Housing Bond Program (the "Program"). The Program was created for the making of loans and grants to acquire, construct, rehabilitate, develop, operate, insure and retain affordable single-family and multi-family housing for low-income and very low-income households.

9) Are there any proposed rules pending on this Part? Yes, these same rules are simultaneously being proposed on a non-emergency basis.

10) Statement of Statewide Policy Objectives: These emergency rules create a statewide program that creates and retains

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

NOTICE OF EMERGENCY RULES

affordable housing for low-income and very low-income households.

11) Time, Place and Manner in which interested persons may comment on this emergency amendment: Interested parties may submit comments, data, views or arguments concerning this rulemaking in writing to: Diane K. Corbett, 401 N. Michigan Ave., Suite 900, Chicago, Illinois 60611. The Authority will consider all written comments received at the above address within 45 days of the date of publication on this notice.

The full text of the emergency rules begins on the next page:

ILLINOIS REGISTER

ILLINOIS HOUSING DEVELOPMENT AUTHORITY
NOTICE OF EMERGENCY RULES

TITLE 47: HOUSING AND COMMUNITY DEVELOPMENT
CHAPTER II: ILLINOIS HOUSING DEVELOPMENT AUTHORITY

PART 365
AFFORDABLE HOUSING BOND PROGRAM

SUBPART A: GENERAL RULES

Section	Authority
365.101	EMERGENCY
365.102	Purpose and Objectives
365.103	Definitions
365.104	Borrowing by the Authority
365.105	Compliance with Law
365.106	Standards
365.107	Authority Determinations
365.108	Forms and Procedures for the Program
365.109	Fees and Charges of the Authority
365.110	Waiver
365.111	Amendment
365.112	Severability
365.113	Gender and Number
365.114	Titles and Captions
365.115	Calendar Days
EMERGENCY	

SUBPART B: ELIGIBILITY

Section	Eligible Activities
365.201	EMERGENCY
365.202	Market Rate Developments
EMERGENCY	

ILLINOIS REGISTER

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

NOTICE OF EMERGENCY RULES

365.203	Eligible Mortgagees Who May Receive Loans
EMERGENCY	
365.204	Land Trusts
EMERGENCY	

SUBPART C: APPLICATION

Section	Application
365.301	EMERGENCY
365.302	Site and Market Study
365.303	Staff Recommendation to the Advisory Commission
365.304	Authority Determination
365.305	Conditional Commitment
EMERGENCY	

SUBPART D: NOTICE OF PROPOSED MULTI-FAMILY DEVELOPMENTS

Section	Applicability and Purpose of Notification
365.401	EMERGENCY
365.402	Notification by Authority
365.403	Comments and Responses
365.404	Compilation of Comments and Responses
365.405	Hearings
EMERGENCY	

SUBPART E: OWNER OF MULTI-FAMILY PROJECTS

Section	Eligible Mortgagees
365.501	EMERGENCY
365.502	Organizational Documents
365.503	Books and Records
365.504	Audits
365.505	Annual Financial Report
365.506	Furnishing Information
EMERGENCY	

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

NOTICE OF EMERGENCY RULES

365.507 Standards for Approval of Conveyance
EMERGENCY
365.508 Purchase of Authority Bonds and Notes
EMERGENCY

SUBPART F: MORTGAGE LOANS TO DEVELOPMENTS

Section
365.601 Maximum Loan Amount for Developments
EMERGENCY
365.602 Maturity of Loans
EMERGENCY
365.603 Recapture of Assistance
EMERGENCY
365.604 Prepayment of Loan
EMERGENCY

SUBPART G: RETURN ON EQUITY

Section
365.701 Statutory Authorization Establishing Rate of Return
EMERGENCY
365.702 Equity and Distributions
EMERGENCY
365.703 Development Funds and Property
EMERGENCY
365.704 Reserve Fund for Replacements
EMERGENCY

SUBPART H: CONSTRUCTION

Section
365.801 Design and Construction Standards
EMERGENCY

SUBPART I: ENERGY EFFICIENCY

Section
365.901 Standards
EMERGENCY

SUBPART J: CERTIFICATIONS

Section
365.1001 Environmental Assessment
EMERGENCY
365.1002 Other Laws
EMERGENCY

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

NOTICE OF EMERGENCY RULES

SUBPART K: MARKETING AND MANAGEMENT

Section
365.1101 Marketing and Management
EMERGENCY
365.1102 Marketing and Management Plans
EMERGENCY
365.1103 Maintenance
EMERGENCY
365.1104 Cost of Service

SUBPART L: TENANTS AND OCCUPANCY

Section
365.1201 Displacement
EMERGENCY
365.1202 Relocation Plan
EMERGENCY
365.1203 Tenant Selection Plan
EMERGENCY
365.1204 Income and Rent Limits
EMERGENCY
365.1205 Commercial Facilities
EMERGENCY

AUTHORITY: Sections 3805/7.19 and 3805/7.25 of the Illinois Housing Development Act (20 ILCS 3805/7.19 and 20 ILCS 3805/7.25) and Sections 65/4 and 65/7(e) of the Illinois Affordable Housing Act (310 ILCS 65/4 and 310 ILCS 65/7)

SOURCE: Emergency Rules adopted at _____ Ill. Reg. _____, effective January 12, 1994, for a maximum of 150 days.

SUBPART A: GENERAL RULES

Section 365.101 Authority
EMERGENCY

This Part is authorized by and made pursuant to the Illinois Housing Development Act, 20 ILCS 3805/1, et seq. (1992), and the Illinois Affordable Housing Act, 310 ILCS 65/1, et seq. (1992) and shall govern the Program.

Section 365.102 Purpose and Objectives
EMERGENCY

This Part is established to accomplish the general purposes of the Act and the Affordable Housing Act and in particular the making

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of mortgages or other loans from the proceeds of Bonds or Notes to be issued by the Authority pursuant to the Act to acquire, construct, preserve, improve, renovate, rehabilitate, maintain, finance, refinance and assist Affordable Housing, including, without limitation Financially Troubled Developments.

Section 365.103 Definitions
EMERGENCY

As used in this Part, words and phrases defined in the Act shall have the meanings ascribed to them therein. In addition, the following words or terms mean:

"Act": The Illinois Housing Development Act, 20 ILCS 3805/1 et seq. (1992), as amended from time to time.

"Advisory Commission": The Illinois Affordable Housing Advisory Commission, established by and acting pursuant to Section 65/6(a) of the Affordable Housing Act.

"Affordable Housing": Residential housing that, so long as the same is fully or partially occupied by Low-Income Households or Very Low-Income Households, requires payments of monthly housing costs, including charges to such households for heat, electricity and water, of no more than 30% of the maximum allowable income as stated for such households as set forth in Section 365.1204(b)(1) and (2) of this Part.

"Affordable Housing Act": The Illinois Affordable Housing Act, 310 ILCS 65/1, et seq. (1992), as amended from time to time.

"Applicant": The person or entity applying for a Loan from the Program.

"Application": An application for a Loan.

"Assistant Director": The Assistant Director of the Authority.

"Authority": The Illinois Housing Development Authority.

"Bonds": The bonds issued by the Authority pursuant to the Act from time to time to finance the Program, including bonds issued from time to time to replace or refund Bonds or Notes previously issued.

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"BSPRA": The builders'/sponsors' profit and risk allowance, if any, given to an Owner against the Equity requirements for a Loan. BSPRA shall not exceed an amount equal to ten percent (10%) of the total estimated replacement cost of the Development.

"Chairman": The Chairman of the Authority.

"Clearinghouse": The person in the Office of the Governor designated by the Governor of the State to provide notice to appropriate State and local agencies of proposed Developments.

"Commercial Tenant": Any entity leasing commercial facilities in a Development.

"Construction Completion Date": The date that construction or rehabilitation of a Development is substantially completed, as determined in writing by the Authority.

"Cost Certification Cutoff Date": The last day of the month in which the Construction Completion Date falls.

"Cumulation Date": The date from which an Owner's right to make Distributions shall begin cumulating, which date shall be the Initial Closing Date.

"Cumulative Distribution": A Distribution of Surplus Cash and/or Residual Receipts representing all or part of a Distribution unpaid but cumulated by an Owner in a prior fiscal year.

"Current Distribution": A Distribution of Surplus Cash and/or Residual Receipts representing all or part of a Distribution earned by an Owner in a current fiscal year.

"Deputy Director": The Deputy Director of the Authority.

"Development": A multi-family housing project made up of five or more units consisting of the Real Estate, together with all improvements, buildings, equipment, and personal property appurtenant thereto.

"Development Funds": All cash, rent subsidies, gross Development income, bank accounts, certificates of

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deposit, trust funds, reserves, escrows, accounts receivable, and other such assets of a Development, excluding security deposits which, pursuant to contract, an Owner may be required to return to a Tenant.

"Director": The Director of the Authority.

"Distribution": Any withdrawal or taking of Surplus Cash and/or Residual Receipts, including segregation of amounts of Surplus Cash and/or Residual Receipts for subsequent withdrawal, for payment to or on behalf of an Owner pursuant to the Authority's written authorization of such Distribution or any transfer of Development property to or on behalf of an Owner.

"Eligible Mortgageor": Any Limited-Profit Entity or Nonprofit Corporation, or any Illinois land trust the sole beneficiary of which is a Limited-Profit Entity or Nonprofit Corporation, but only if such Eligible Mortgageor's ownership of the Development (including any partnership interest or stock ownership interest in such Mortgageor), or such beneficiary's interest in such Illinois land trust (including the ownership of any partnership interest or stock ownership interest in such beneficiary), shall not cause any tax-exempt Bonds, if any, used to finance the Development to become taxable for federal income tax purposes and the organizational documents of such Mortgageor or such beneficiary referred to in Section 365.502 of this Part at all times are in compliance with (or such Mortgageor or beneficiary has executed a written agreement meeting) the requirements of Section 365.502 of this Part.

"Equity": The amount of funds provided by Owner for a Development, including an allowance for BSPRA, as determined by the Authority in its sole discretion.

"Final Closing Date": The date on which the Authority issues its final closing memorandum.

"Financially Troubled Development": A Development financed by a loan from the Program which subsequently fails to meet its Mortgage obligations.

"Initial Closing Date": The date on which the Authority issues its initial closing memorandum.

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"Limited-Profit Entity": Any individual, joint venture, partnership, limited partnership, trust or corporation organized or existing under the laws of the State or authorized to do business in the State (including, without limitation, a limited liability company) and having articles of incorporation or comparable documents of organization (or a written agreement with the Authority) which, in addition to meeting other requirements of law, meets the requirements of Section 3805/2(k) of the Act.

"Loan": The loan financed through the Program made by the Authority to a Mortgageor to be used in connection with a Development.

"Low-Income Household": A single person, family or unrelated persons living together whose adjusted income is more than 50%, but less than 80%, of the median income of the area of residence, adjusted for family size, as such adjusted income and median income for the area are determined from time to time by the United States Department of Housing and Urban Development for purposes of Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437).

"Members": The Members of the Authority.

"Mortgage": The mortgage, or other instrument in the nature of a mortgage, and all other security documents encumbering a Development, together with supplements thereto and modifications or amendments thereof.

"Mortgage Note": The document executed as evidence of a Mortgageor's indebtedness under a loan secured by a Mortgage, and any supplements thereto and modifications or amendments thereof.

"Mortgageor": The Limited-Profit Entity, Nonprofit Corporation or Trustee for either entity, holding title to a Development who has executed and delivered to the Authority a Mortgage.

"Nonprofit Corporation": A not-for-profit corporation incorporated pursuant to the provisions of the Illinois General Not-for-Profit Corporation Act of 1986 (805 ILCS 105/101.01 et seq. (1992)) or the State Housing Act (310 ILCS 5/1 et seq. (1992)) and having articles of incorporation or a written agreement with the

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Authority which, in addition to meeting other requirements of law, meet the requirements of Section 3805/2(m) of the Act.

"Notes": The notes issued by the Authority pursuant to the Act from time to time to finance the Program.

"Owner": The Limited-Profit Entity or Nonprofit Corporation holding title to Real Estate or a Development or, when such Real Estate or the Development is held in an Illinois land trust, the Limited-Profit Entity or Nonprofit Corporation owning the entire beneficial interest in a Trust. Under no circumstances shall Owner mean the Authority or a Trustee.

"Part": This Part 365.

"Program": The Illinois Affordable Housing Bond Program.

"Real Estate": The real property upon which a Development is to be or has been constructed.

"Residual Receipts": Any Surplus Cash remaining as of the end of an annual fiscal period after the deduction of the amount of any repayment of any subordinate loans, if any, evidenced by a note to be repaid from Surplus Cash and all Distributions from Surplus Cash.

"Resolution": Any resolution or indenture adopted by the Authority pursuant to the Act authorizing the issuance of Bonds or Notes and setting forth the general terms and conditions under which the Authority may issue, deliver and sell Bonds and Notes, as amended and supplemented from time to time.

"Rules": The rules and regulations of the Authority as amended from time to time.

"Series Resolutions": The series resolutions adopted by the Authority from time to time pursuant to the Act and the Resolution authorizing the issuance of a series of Bonds or Notes.

"Staff": The Director, Deputy Director, Assistant Director and the other employees of the Authority.

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"State": The State of Illinois.

"Surplus Cash": That part of Development income, calculated on an accrual basis of accounting remaining as of the end of a fiscal year after deductions for expenses, reserves, escrows and other similar items have been made in accordance with priorities established by the Authority in writing.

"Tenant": The person, family or unrelated persons leasing a dwelling unit in a Development.

"Tenant Selection Plan": The tenant selection plan approved by the Authority for a Development.

"Trust": The Illinois land trust (if any) which holds legal title to a Development.

"Trustee": The trustee of a Trust.

"Trust Fund": The Illinois Affordable Housing Trust Fund.

"Trust Fund Moneys": All moneys, deposits, revenues, income, interest, dividends, receipts, taxes, proceeds and other amounts or funds deposited or to be deposited in the Trust Fund pursuant to Section 65/5 of the Affordable Housing Act and any proceeds, investments or increase thereof.

"Utility Allowance": The cost of electricity, heat and water based on reasonable consumption of these utilities.

"Very Low-Income Household": A single person, family or unrelated persons living together whose adjusted income is not more than 50% of the median income of the area of residence, adjusted for family size, as such adjusted income and median income for the area are determined from time to time by the United States Department of Housing and Urban Development for purposes of Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437).

Section 365.104 Borrowing by the Authority
EMERGENCY

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To the extent allowed by the Act, and in the manner determined by the Authority, the Authority may borrow funds with which to make loans or incur other obligations under the Program.

Section 365.105 Compliance with Law
EMERGENCY

Notwithstanding anything herein to the contrary, this Part shall be construed in conformity and compliance with applicable Federal law. Whenever reference is made in this Part to applicable law, statute, rule or regulation, the same shall be construed to mean the law, statute, rule or regulation in effect at the time of reference.

Section 365.106 Standards
EMERGENCY

In administering the Program, the Authority, the Chairman and the Staff shall in the exercise of discretion, consider, in addition to the criteria specifically set forth, the purposes of the Program to provide decent, safe, and sanitary multi-family rental housing; the requirements of applicable State and Federal law; the financial condition and previous experience of the Applicant and potential and participating Owners; the Authority's ability to purchase or redeem any Notes or Bonds and to comply with the requirements of the Resolution and the applicable Series Resolutions authorizing any Notes or Bonds; the Authority's ability to comply with the terms and provisions of any Notes or Bonds; the financial integrity of the Program; the housing needs of the State; architectural and construction quality; preservation of the value of the Development as security for a loan; the ability of the Owner to repay a loan out of Development income; the desirability of achieving a reasonable geographic distribution of Developments throughout the State; the number of units reserved for Low-Income Households and Very-Low Income Households; the heterogeneous mix of Tenants; the standards and practices of a prudent lender; the requirements of local housing codes and zoning laws; specific standards set forth in Authority agreements and documents; or any other factors relevant under the circumstances. The Authority shall give preferential consideration to Developments which will be newly constructed or substantially rehabilitated. Except as permitted in Section 365.601(c), the Authority shall not refinance any existing Development unless, in connection with the making of such loan, the Development shall be transferred to an Owner who is not affiliated with a prior Owner.

Section 365.107 Authority Determinations
EMERGENCY

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Whenever pursuant to this Part, a determination, election or approval may be made by the Authority, such determination, election or approval unless otherwise expressly stated herein shall be at the Authority's sole discretion.

Section 365.108 Forms and Procedures for the Program
EMERGENCY

The Staff may prepare, use, supplement and amend such forms, agreements and other documents and such procedures as it may determine to be necessary or desirable for the purposes of implementing the Program, all as may be prescribed by the Director, or, in the Director's absence, the Deputy Director or Assistant Director.

Section 365.109 Fees and Charges of the Authority
EMERGENCY

In connection with the Program, the Authority may establish and collect such fees and charges as may be established by the Authority from time to time. Such fees and charges may be paid from the proceeds of Notes or Bonds issued by the Authority. Such fees and charges may be used by the Authority for its general corporate purposes, including costs of administering the program. Such fees and charges may be waived at the Authority's election, may vary from Development to Development, and may vary from time to time.

Section 365.110 Waiver
EMERGENCY

By resolution, the Members may authorize the Director to waive or vary particular provisions of this Part to conform with the requirements of applicable State or Federal law or to conform with the determination of the Authority that the application of such provisions may result in undue hardship or produce an unreasonable result.

Section 365.111 Amendment
EMERGENCY

This Part may be supplemented, amended, or repealed by the Members, from time to time and in such manner as the Members may determine. This Part shall not constitute or create any contractual rights.

Section 365.112 Severability
EMERGENCY

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If any clause, sentence, paragraph, subsection, section, or subpart of this Part be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder hereof, but shall be confined in its operation to the clause, sentence, paragraph, subsection, section, or subpart hereof as to which such judgment is rendered.

Section 365.113 Gender and Number
EMERGENCY

All terms used in any one gender or number shall be construed to include any other gender or number as the context may require.

Section 365.114 Titles and Captions
EMERGENCY

Titles and captions of subparts, sections, and subsections are used for convenience and reference and are not a part of the text.

Section 365.115 Calendar Days
EMERGENCY

Days shall mean calendar days. Due dates falling on a Saturday, Sunday, or legal State or Federal holiday shall be deemed to fall on the next calendar day that is not a Saturday, Sunday, or a legal State or Federal holiday.

SUBPART B: ELIGIBILITY

Section 365.201 Eligible Activities
EMERGENCY

- a) Any Trust Fund Moneys transferred to the Authority pursuant to Section 65/8(b) of the Affordable Housing Act, or otherwise obtained, paid to or held by or for the Authority, or pledged pursuant to a resolution of the Authority, for the Bonds or Notes under the Act, and all proceeds, payments and receipts from investments or use of such moneys, including any residual or additional funds or moneys generated or obtained in connection with any of the foregoing, may be held, pledged, applied or dedicated by the Authority as follows:

- 1) as required by the terms of any pledge of or Resolution of the Authority authorized under the Affordable Housing Act in connection with Bonds or Notes issued pursuant to the Act;

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- 2) to or for:

- A) costs of issuance and administration and the payments of any principal, interest, premium or other amounts or expenses incurred or accrued in connection with Bonds or Notes, including rate protection contracts and credit support arrangements pertaining thereto;

- B) the Authority's expenses and servicing, administration and origination fees and charges in connection with any Loans, Mortgages, or Developments funded or financed or expected to be funded or financed, in whole or in part, from the issuance of Bonds or Notes, provided that such expenses, fees and charges are obligations, whether recourse or nonrecourse, and whether financed with or paid from the proceeds of Bonds or Notes, of the Owner, Mortgageors or other users;

- 3) to or for costs of issuance and administration and the payments of principal, interest, premium, Loan fees, and other amounts or other obligations of the Authority, including rate protection contracts and credit support arrangements pertaining thereto, for loans, commercial paper or other notes or bonds issued by the Authority pursuant to the Act, provided that the proceeds of such loans, commercial paper or other notes or bonds are paid or expended in connection with, or refund or repay, loans, commercial paper or other notes or bonds issued or made in connection with bridge loans or loans for the construction, renovation, redevelopment, restructuring, reorganization of Affordable Housing and related expenses, including development costs, technical assistance, or other amounts to construct, preserve, improve, renovate, rehabilitate, refinance, or assist Affordable Housing, including a Financially Troubled Development, permanent or other financing for which has been funded or financed or is expected to be funded or financed in whole or in part by the Authority through the issuance of or use of proceeds from Bonds or Notes;

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4) to or for direct expenditures or reimbursement for Development costs, technical assistance, or other amounts to construct, preserve, improve, renovate, rehabilitate, refinance, or assist Affordable Housing, including Financially Troubled Developments, permanent or other financing for which has been funded or financed or is expected to be funded or financed in whole or in part by the Authority through the issuance of or use of proceeds from Bonds or Notes; and

5) for deposit into any residual, sinking, reserve or revolving fund or pool established by the Authority, whether or not pledged to secure Affordable Housing Program Bonds or Notes, to support or be utilized for the issuance, redemption, or payment of the principal, interest, premium or other amounts payable on or with respect to any existing, additional or future Bonds or Notes, or to or for any other expenditure authorized by the Act or the Affordable Housing Act.

b) All or a portion of the Trust Fund Moneys on deposit or to be deposited in the Trust Fund not already certified for transfer or transferred to the Authority pursuant to the Affordable Housing Act may be used to secure the repayment of Bonds or Notes or otherwise to supplement or support Affordable Housing funded or financed or intended to be funded or financed, in whole or in part by Bonds or Notes.

Section 365.202 Market Rate Developments EMERGENCY

Pursuant to Section 65/10(d) of the Affordable Housing Act and to Sections 65/4 and 65/12 of the Act, the Authority may make Loans for Developments which are to be occupied partly by Low-Income Households or Very Low-Income Households provided that the number of units to be occupied by Low-Income Households or Very-Low Income Households shall be acceptable to the Authority in its sole discretion, and shall be in compliance with any Federal law and the regulations promulgated thereunder, if applicable. A minimum of 10% of the units in any Development must be set aside for Very Low-Income Households. A minimum of 20% of the units in any Development must be set aside for Very Low-Income and Low-Income Households; provided, however, that the majority of moneys appropriated to the Trust Fund in any given year, including moneys

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transferred and certified for transfer in such year for the purposes and uses specified in Section 65/8(c) and 65/9 of the Affordable Housing Act will be used for Affordable Housing for Very Low-Income Households.

Section 365.203 Eligible Mortgagors Who May Receive Loans EMERGENCY

The recipients of Loans funded by the proceeds of Bonds or Notes are required at all times to be Eligible Mortgagors.

Section 365.204 Land Trusts EMERGENCY

Whenever title to the Real Estate is held in an Illinois land trust, the agreement creating the Trust and establishing the respective rights, powers, and duties of the Trustee and Owner shall be in a format approved by the Authority. The beneficial interest of such land trust shall be collaterally assigned to the Authority as additional security for the Loan.

SUBPART C: APPLICATION

Section 365.301 Application EMERGENCY

Applicants shall submit Applications on forms provided by the Authority.

Section 365.302 Site and Market Study EMERGENCY

The Authority shall conduct or cause to be conducted at the Applicant's expense a site study and a market study when an Applicant seeks a loan. The provisions of this Section shall not relieve the Owner of its responsibility to provide a marketing and management plan as provided in Section 365.1101 of this Part.

Section 365.303 Staff Recommendation to the Advisory Commission EMERGENCY

After initial review, the Staff shall prepare and present to the Advisory Commission a report concerning those Applications that the Staff recommends should be approved. The Staff shall inform the Advisory Commission, as to each Application, whether such Application is being recommended for funding, not recommended for funding or rejected due to being ineligible for funding.

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Section 365.304 Authority Determination
EMERGENCY

The Staff shall present to the Members all positive recommendations for Loans under the Program along with the recommendations therefor from the Advisory Commission. The proceeds of Bonds or Notes used to make Loans can only be allocated to Loans for Developments approved by resolution of the Members for funding with such proceeds.

Section 365.305 Conditional Commitment
EMERGENCY

After approval of an Application by the Members, the Staff shall prepare and deliver to the Applicant a conditional commitment that commits the Authority to make a Loan expressly conditioned upon and subject to the Applicant's meeting all of the requirements of the conditional commitment and the availability of funds from the program. If the conditional commitment expires prior to the consummation of the Loan, the Authority shall have no obligation to make such Loan. The Applicant shall forfeit all fees paid to the Authority and the Applicant shall be liable for any fees or charges then due and owing to the Authority.

SUBPART D: NOTICE OF PROPOSED MULTI-FAMILY DEVELOPMENTS

Section 365.401 Applicability and Purpose of Notification
EMERGENCY

a) Purpose

The purpose of this Subpart is to set forth requirements for notifying certain persons and agencies when an Applicant proposes to acquire, construct, rehabilitate, finance, or refinance a Development in their district, county or municipality.

b) Applicability

The provisions of this Subpart shall apply only to Developments subject to this Part.

c) Compliance and Proof of Compliance

An Application shall not be deemed to be complete until the Applicant has complied with the provisions of this Subpart applicable to it and has submitted to the Authority evidence of such compliance satisfactory to

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the Authority. An Applicant's failure to comply with this Subpart shall relieve the Authority of all obligations regarding the Development.

d) Applicant Does Not Represent Authority

In responding to comments, attending hearings or undertaking any other activities pursuant to this Subpart, an Applicant shall not hold itself out as representing the Authority and shall not take or suffer any action which would incur any obligation on behalf of the Authority.

Section 365.402 Notification by Authority
EMERGENCY

a) Notice of Development

Before the Staff submits to the Members the Staff's recommendation that the Authority should issue a conditional commitment to make a Loan to fund a Development, the Authority shall give written notice of the proposed Development to the following persons and agencies:

- 1) the chairman of the county board of the county in which the Development is located or is proposed to be located;
- 2) the mayor or other chief executive of the municipalities, if any, in which the Development is located or is proposed to be located;
- 3) in municipalities with a population of more than 1,500,000 persons, the alderman of the ward in which the Development is located or is proposed to be located and the Planning Commission;
- 4) appropriate Clearinghouses; and
- 5) each member of the General Assembly from the legislative district in which the Development is located or is proposed to be located.

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b) Forms

Notice under this Section shall be given on Authority forms.

c) Contents

The notice shall set forth the name and address of the proposed Development; the name, address and telephone number of the Applicant; the estimated amount of the Loan; the type of any other assistance of any other governmental body proposed to be sought by the Applicant; the total number of units; the total number of any assisted units; the type of Development (for example, elderly, family or handicapped); and any other information that the Authority deems relevant.

Section 365.403 Comments and Responses
EMERGENCY

a) Comments

The persons and agencies receiving notice of a proposed Development pursuant to Section 365.402 of this Part shall have 30 days from the date of mailing to submit written comments to the Applicant.

b) Applicant's Responses

The Applicant shall respond in writing to all comments received under this Subpart, with a copy thereof to the Authority.

Section 365.404 Compilation of Comments and Responses
EMERGENCY

a) Documents

The Applicant shall submit to the Authority the following documents within ten (10) days after expiration of the notice period described in Section 365.403(a) of this Part:

- 1) a copy of every written comment pursuant to Section 365.403 of this Part and a written summary of any oral comment received;

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- 2) a copy of every response made pursuant to Section 365.403 of this Part;

- 3) a history of conferences, hearings and other activities undertaken in relation to comments on the proposed Development;

- 4) a brief summary of the Applicant's actions in response to comments; and

- 5) a certification from the Applicant that the information provided under this Section is accurate and complete.

b) Information

The Applicant shall provide sufficient information under this Section to enable the Authority to determine whether the Applicant has adequately considered and responded to comments received pursuant to Section 365.403 of this Part.

c) Denial

The Authority may at any time deny an Applicant's Application for, among other reasons, failure to comply with the provisions of this Subpart. Such denial shall be in writing and shall set forth the conditions, if any, that must be met for the Authority to continue to consider the Application.

d) Assistance of Authority

It shall be the Applicant's responsibility to seek the assistance of the Authority, if needed, in addressing comments received pursuant to this Section.

Section 365.405 Hearings
EMERGENCY

The Applicant shall provide written notice to the Authority of any public meeting or adjudicatory hearing which may be held in connection with the proposed Development. The Applicant shall mail such notice to the Authority within 2 days after receiving notice or otherwise becoming aware of such hearing. It shall be the Applicant's responsibility to prepare for and attend such hearings and to respond to any inquiry made at or in connection with such hearings regarding the proposed Development.

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SUBPART E: OWNER OF MULTI-FAMILY PROJECTS

Section 365.501 Eligible Mortgageors
EMERGENCY

The Authority may make Loans under the Program to Eligible Mortgageors. The Owner of a Development shall at all times be an Eligible Mortgageor. If the Authority learns that an Owner is not or has ceased to be an Eligible Mortgageor, then the Authority may take any action which the Mortgage or the Mortgage Note entitle or permit the Authority to take in the case of a failure to make timely payment of principal or interest on the loan, including but not limited to declaration of default and pursuit of remedies.

Section 365.502 Organizational Documents
EMERGENCY

To qualify and maintain the Owner as a Limited-Profit Entity or Nonprofit Corporation as defined in the Act and this Part, to qualify and maintain the Trustee or the Owner, as the case may be, as Eligible Mortgageors as defined in this Part, and to ensure that the Owner, and each person or entity which has an ownership interest in the Owner and/or Trustee, are required to comply with the Act and this Part and shall not cause the interest on the Bonds or Notes used to finance the Development, which was excludable from Federal income tax, if any, to become taxable for Federal tax purposes, such Owner shall either provide in its organizational documents or execute a written agreement with the Authority, that such owner shall at all times be a Limited-Profit Entity or Nonprofit Corporation and that the Authority shall have the rights and remedies to enforce such provisions of such entities' organizational documents or written agreement as are provided in the Act. The provisions of such documents of organization as are required by this Section shall not be amended without prior written Authority approval. Any such written agreement acceptable to the Authority, and duly authorized by an Owner, shall satisfy the requirements of this Section.

Section 365.503 Books and Records
EMERGENCY

The books and records of the Development and the Owner shall be prepared and maintained in accordance with Authority requirements and shall be subject to inspection, examination, and copying by the Authority and its authorized representatives or agents at such times as the Authority reasonably requires for the purpose of determining compliance with the Rules, the Act, the Affordable Housing Act and all contracts and agreements relating to the

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Program. The books and records of the Owner, if separate from the books and records of the Development, shall likewise and to the same extent be subject to inspection, examination, and copying by the Authority and its authorized representatives or agents at such times as the Authority reasonably requires.

Section 365.504 Audits
EMERGENCY

Any Development and offices, architectural plans and specifications, apparatuses, devices, books and records, contracts, documents, and other papers relating thereto of the Development and the Owner shall at all times be maintained in reasonable condition for proper audit and shall be subject to inspection, examination, and copying by the Authority and its authorized representatives or agents at such times as the Authority reasonably requires. All audits, certifications, and financial reports that the Owner is required by contract with the Authority to allow, undertake, or prepare shall be made by and certified to the Authority by an independent certified public accountant acceptable to the Authority.

Section 365.505 Annual Financial Report
EMERGENCY

Within the time period prescribed by the Authority after the end of the Development's fiscal year, the Owner shall provide to the Authority a complete annual financial report based upon the books and records of the Development and the Owner, prepared in accordance with Authority requirements, and certified to the Authority by the Owner and an independent certified public accountant acceptable to the Authority.

Section 365.506 Furnishing Information
EMERGENCY

The Owner shall furnish such reports, projections, certifications, analyses, budgets, operating reports and tax returns as are required by the Authority or by applicable Federal or State statutes, regulations or subsidy or assistance programs, and shall furnish specific answers to the Authority's questions about the Owner's income, assets, liabilities, and contracts and, if applicable, about the administration, operation, maintenance, occupancy, financial soundness, and physical condition of the Development.

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Section 365.507 Standards for Approval of Conveyance
EMERGENCY

In determining whether to approve and/or impose restrictions on the conveyance, assignment, leasing, mortgaging, pledging or other transfer of the Development, and the beneficial interest in and power of direction over the Trust, or any partnership interest or stock ownership interest or other ownership interest in the beneficiary of the Trust, the Authority shall grant such approval, with any necessary restrictions, only if the Authority determines in its discretion that such action will not have an adverse effect upon the financial stability of the Development, the status or ratings of the Bonds or Notes that are providing all or any part of the financing for such Development, or the ability to repay such Bonds or Notes or the likely value of the Development as security for the Loan.

Section 365.508 Purchase of Authority Bonds and Notes
EMERGENCY

No Owner, including any "related person," as defined in Section 147 of the Internal Revenue Code of 1986, 26 I.R.C. 147 (1992), as amended from time to time, shall pursuant to any arrangement, formal or informal, direct or indirect, agree to purchase any Bonds, Notes or other obligations of the Authority, the interest on which is excludable from Federal income tax, in an amount related to the aggregate principal amount of the Loan to be made to the Owner or such related person.

SUBPART F: MORTGAGE LOANS TO DEVELOPMENTS

Section 365.601 Maximum Loan Amount for Developments
EMERGENCY

a) Establishing Amount. The maximum Loan amount shall be an amount which can be repaid out of the Developments' expected net operating income after deductions for operating expenses, reserves and escrows, as determined by the Authority in its sole discretion, and without taking into account any income from any Commercial Tenant, based upon a debt service coverage ratio of not less than 1.10 to 1.0 or such higher amount as may be required by the Resolution, or applicable Series Resolution.

b) The Owner shall invest as Equity in the Development an amount no less than 10% of the total estimated replacement cost of the Development or 10% of the total

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cost of the Development, as those costs may be determined and approved by the Authority in its sole discretion, whichever cost is less. The Authority may, in its discretion, require the Owner to invest Equity in an amount greater than the minimum amount required pursuant to this Section. In calculating the total estimated replacement cost of the Development, the Authority shall consider the design architect's fees; the supervisory architect's fees; legal, accounting and other organizational fees; marketing, consulting and purchasing agent fees; construction interest; the Authority's service and Development fees; real estate and other taxes; title and recording fees; financial contingency and construction contingency; the development cost escrow, if any; BSPRA; relocation costs; off-site improvements; land costs; carrying charges; and any other costs approved by the Authority. In calculating the total cost of the Development, the Authority shall consider trade payments to contractors and subcontractors, general overhead, bond premiums, insurance, builder's profit (if any), change orders, discounts, rebates and any other costs approved by the Authority.

c) Troubled Affordable Housing. The Authority may, at the Authority's election, restructure Loans made from the proceeds of Bonds or Notes under the Program that the Authority determines, in its sole discretion, are in jeopardy of not being repaid or that have been made to Developments in jeopardy of not being completed. In any such restructuring, the Authority may, subject to any covenants contained in the Resolution or applicable Series Resolution, reduce the principal amount of or interest rate on the Loan upon such terms and conditions as the Authority may determine in its sole discretion. In making such election to restructure a Loan, the Authority shall consider whether the financial strength of the Program would be enhanced more by restructuring the Loan than by pursuing and enforcing the Authority's rights and remedies under the Mortgage and the Mortgage Note.

Section 365.602 Maturity of Loans
EMERGENCY

The maximum maturity of a Loan to be made by the Authority for permanent financing of multi-family rental housing under this Program shall not exceed 40 years and may be shorter at the sole

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Section 365.702 Equity and Distributions
EMERGENCY

- a) Right to Distributions. An Owner may have the right, commencing as provided in subsection (b) below, to make annual Distributions following the completion of a Development's fiscal year in an amount not to exceed a sum equal to the product of the Equity in the Development multiplied by a factor equal to two hundred percent (200%) of the yield paid on 30-year GNMA mortgage certificate, or such lesser sum as the Authority may determine, set and fixed as of the date of the conditional commitment letter to the Development. The Chief Financial Officer of the Authority shall certify to the GNMA rate as of such date. If a Distribution cannot be made as provided in subsections (c) and (d) below, an Owner may cumulate the right to make a Distribution. In any partial fiscal year following the Cumulation Date, the amount of a Distribution shall be cumulated pro rata. If GNMA mortgage certificates cease to be issued for 30-year terms, the annual Distributions shall be calculated based on the yield paid on the instrument most nearly comparable in character and credit to such GNMA mortgage certificate, as determined by the Authority.
- b) Cumulation Date. An Owner's right to a Distribution shall begin to cumulate on the Initial Closing Date.
- c) Source of Distributions. An Owner may make Current and Cumulative Distributions only out of Surplus Cash and/or Residual Receipts. If Surplus Cash or Residual Receipts are unavailable in a given fiscal year, an Owner shall make no Current Distribution, but the right to make such Distribution shall cumulate. If Surplus Cash and/or Residual Receipts are insufficient in a given fiscal year to make the approved Distribution for the Development, an Owner may distribute all available Surplus Cash and/or Residual Receipts and cumulate the right to make the remainder of the Distribution in future years when and if Surplus Cash and/or Residual Receipts are available.
- d) Timing of Distributions. No Distribution shall be made until after the Final Closing Date. Even if Surplus Cash and/or Residual Receipts are available, the initial and all subsequent Distributions, including Cumulative Distributions, may be made only after the

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discretion of the Authority. In determining the term of a Loan, the Authority shall take into account its:

- a) ability to pay when due the principal (including any sinking fund installments) and interest on any Bonds or Notes;
- b) ability to purchase or redeem any Bonds and to comply with the requirements of the Resolution and Series Resolution authorizing any Bonds;
- c) ability to comply with the terms and provisions of any Notes;
- d) the feasibility of the proposed Development;
- e) the financial integrity of the Program;
- f) the requirements of applicable State and Federal law; and
- g) any other relevant factors.

Section 365.603 Recapitulation of Assistance
EMERGENCY

Within each set of Loan documents the Authority shall establish requirements regarding use, occupancy and rent levels as required by the Act, the Affordable Housing Act and this Part. If the Owner violates any of the provisions of the agreement or agreements containing such requirements, such violation shall be deemed a default under the Loan documents whether or not expressly so stated therein.

Section 365.604 Prepayment of Loan
EMERGENCY

The Authority may prohibit the prepayment of a Loan when, in the Authority's determination, such prepayment will diminish the supply of Affordable Housing as contemplated by the Act and the Affordable Housing Act, or when the Bonds or Notes issued to provide the Loan prohibit prepayment of the Bonds or Notes.

SUBPART G: RETURN ON EQUITY

Section 365.701 Statutory Authorization Establishing Rate of Return
EMERGENCY

Pursuant to Paragraph 3805/8 of the Act, the Authority is required to establish Equity at the time of final disbursement of Loan proceeds. It is the purpose of this Subpart to set the criteria by which a permitted rate of return will be established.

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Authority has approved the Development's annual financial report (pursuant to Section 365.505 of this Part); the Development has an approved Development budget for the next fiscal year; the Owner has complied with all outstanding notices of requirements for proper maintenance and operation of the Development; the Owner has cured any defaults or breaches of applicable Authority Rules, contracts and agreements; and the Authority has issued its written authorization of such Distribution.

- e) Amount of Equity. As required by the Act, the Authority shall establish Equity in a Development at the time of making the final Loan advance. In no event shall the amount of such Equity be calculated to include any grants or other funds not originating with the Owner. Any Equity in a Development arising out of the sale or purchase of Low-Income Housing tax credits (including bona fide notes which are not in default executed by tax credit purchasers in favor of an Owner) shall be deemed to constitute funds originating with the Owner. Once established by the Authority, the amount of an Owner's Equity shall remain constant so long as the Mortgage Note and Mortgage are outstanding on the Development; provided however, the Authority shall reduce the Equity amount by any amount which is not timely invested in the Development.

Section 365.703 Development Funds and Property
EMERGENCY

All Development Funds received by an Owner or its agent shall be deposited to and maintained, as the Authority directs, in appropriate accounts with the Authority, or in a Federally insured bank or savings and loan association or other financial institution located and qualified to do business in Illinois and whose deposits are insured by the Federal government. The Authority shall by contract with the Owner establish priorities for the disbursement and use of Development Funds, including the funding of reserves and escrows, and shall require that the Owner have personal liability for Development Funds or Development property that come into its hands or the hands of its agents that by contract with the Authority the Owner is not entitled to retain or has disbursed or used in violation of Authority requirements, together with the costs and expenses of the Authority in redressing the violation. In establishing such priorities, the Owner and Authority shall take into account the purposes of the Program, the financial stability of the Development, the physical

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condition of the Development, the value of the Development as security for the Loan, and other relevant factors. It shall be a violation of the Rules for the Owner or its agent to disburse, use or retain Development Funds or Development property other than in accordance with the requirements or priorities established pursuant to this Section and set forth in Authority contracts with the Owner or other documents.

Section 365.704 Reserve Fund for Replacements
EMERGENCY

The Owner of a Development shall set aside out of gross Development income and shall deposit with the Authority such sums as the Authority shall specify or applicable Federal statutes, regulations, or agreements require to be deposited in an account to be titled the Reserve Fund for Replacements. No proceeds of the Reserve Fund for Replacements may be withdrawn, disbursed, or applied without written Authority approval. The sums set aside, together with any income earned thereon, shall be used to pay the costs of replacing structural elements and mechanical equipment of the Development and for such other Development expenses as the Authority in its sole discretion may approve. In determining the amounts to be set aside or deposited to the Reserve Fund for Replacements, the Authority shall consider the nature and condition of any structural elements or mechanical equipment which may have to be replaced, the estimated useful life of any such structural elements or mechanical equipment, the estimated cost of replacements, applicable Federal requirements, construction costs, and potential gross Development income. In connection with any requested disbursements from the Reserve Fund for Replacements, the Authority shall consider the benefit to the Development of the proposed disbursement, the amount to be disbursed, the amount on deposit in the Reserve Fund for Replacements, whether the Owner is delinquent in making deposits to the Reserve Fund for Replacements or is otherwise delinquent in making payments or deposits under the Loan documents, other uses for which the Reserve Fund for Replacements is likely to be needed, and any other relevant factors.

SUBPART H: CONSTRUCTION

Section 365.801 Design and Construction Standards
EMERGENCY

Developments financed by Loans under the Program shall be designed and constructed or rehabilitated to conform with applicable Federal, State, and local statutes, regulations, ordinances,

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standards, and codes, with industry practices in Illinois, and with the requirements of applicable Authority Rules and guides.

SUBPART I: ENERGY EFFICIENCY

Section 365.901
EMERGENCY Standards

All Developments receiving assistance from the Program for construction and rehabilitation shall comply with the provisions of 47 Ill. Adm. Code 310. Subpart I. Any waiver of such provisions shall be made in accordance with Section 310.913 of this Part.

SUBPART J: CERTIFICATIONS

Section 365.1001
EMERGENCY Environmental Assessment

Prior to the making of a Loan under the Program, the Authority shall require the Applicant to conduct or authorize the Authority to cause to be conducted on the Applicant's behalf a Phase I environmental assessment review, certified to the Authority, of the proposed development undertaken by an environmental consultant approved in advance by the Authority. The Authority may, at its election, commission such assessment. The environmental assessment shall, at a minimum, consist of a review of historic activities on the Real Estate and current conditions of the Real Estate which identify potential violations of applicable environmental laws. If the results of the Phase I environmental assessment disclose the presence of any hazardous substance as described at Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601(14)), or any other adverse environmental conditions, as determined by the Authority, then the Authority may deny the Application or the funding of the Loan. The Authority may elect, as a condition to further review of the Application or to the making of the Loan, as the case may be, that the Applicant shall conduct or authorize the Authority to conduct on the Applicant's behalf a Phase II comprehensive environmental assessment certified to the Authority by an environmental consultant approved in advance by the Authority. This Phase II assessment may consist of sampling, lab analysis and an estimate of the magnitude of environmental problems, as well as costs involved in site cleanup. The Applicant shall pay the costs of all such assessments, and the costs may, at the sole discretion of the Authority, be payable out of Loan proceeds.

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Section 365.1002
EMERGENCY Other Laws

All Developments receiving Loans from the Program for construction or rehabilitation shall comply with the provisions of the Environmental Barriers Act (410 ILCS 25/1 et seq. (1992)), the Illinois Accessibility Code (71 Ill. Adm. Code 400), the Americans with Disabilities Act (42 USC 12101 et seq.), Executive Order for the Reduction of Earthquake Hazards (Executive Order 90-2), the Historic Preservation Act (20 ILCS 3410/1 et seq. (1992)) and all other applicable Federal, state or local laws.

SUBPART K: MARKETING AND MANAGEMENT

Section 365.1101
EMERGENCY Marketing and Management

a) It shall be the responsibility of the Owner to provide for the marketing and management of the Development in a manner and by a party satisfactory to the Authority so as to promote the purposes of the Program and the financial stability of the Development and to preserve the value of the Authority's security interest in the Development.

b) All marketing and management plans and management agreements shall be acceptable to the Authority. Such plans and agreements shall conform to any applicable conditions providing for Federal assistance (if any) relating to the Development.

Section 365.1102
EMERGENCY Marketing and Management Plans

a) Approval. Before the Authority makes a Loan under the Program and at such other times as may be required by the Authority, the Authority may require the Applicant to submit for the Authority's approval plans for the marketing and management of the Development. In deciding whether to approve such plans, the Authority may consider the purposes of the Program; the provisions of the Tenant Selection Plan, as applicable; and applicable Federal and State statutes and regulations; and any other matters it determines to be relevant.

b) Contents of Marketing Plan. The marketing plan shall set forth the policies and procedures to be used in

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marketing and shall address: the qualifications of the marketing agent; the nature of the market to be served by the Development; the dates of availability of units by type and location; the dates of availability and locations of facilities essential to the marketing campaign, including model units, the rental office, and any community building; the provisions for compliance with all fair housing requirements; the promotion of the Development, including the use of mass media, public relations, brochures, signs, equipment and furnishings for model units and the rental office, and marketing staff. The marketing plan shall also set forth the intended mix of family, elderly and handicapped Tenants; where appropriate, the intended Tenant income mix and method of achieving such a mix (including number of units); the method of processing the applications of prospective Tenants; the criteria upon which prospective Tenants' applications for occupancy are to be approved or disapproved; preference for occupancy in the Development for persons and families displaced by urban renewal, slum clearance, other governmental action or natural disaster; rent schedules; and any other relevant matters.

- c) Contents of Management Plan. The Management Plan shall set forth the policies and procedure to be used by the managing agent in operating the Development and shall address the qualifications of the managing agent; procedures for evaluating management personnel; physical maintenance of the Development; procedures for tenant selection; preference for occupancy in the Development for persons and families displaced by urban renewal, slum clearance, other governmental action or natural disaster; tenant/landlord relations; eviction procedures; marketing; financial reporting; books and records of the Development; the intended mix of family, elderly and handicapped Tenants; where appropriate, the intended Tenant income mix and method of achieving such a mix (including number of units); the method of processing prospective Tenants; the criteria upon which prospective Tenants' applications for occupancy are to be approved or disapproved; the managing agent's compensation; and any other relevant matters.

- d) Responsibility. The Owner shall be responsible for ensuring both the marketing agent's and the managing agent's compliance with all applicable ordinances,

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regulations, statutes, and applicable Rules, agreements and requirements.

Section 365.1103 Maintenance EMERGENCY

The Owner shall maintain the Development, including, without limitation, the dwelling units, commercial facilities, and grounds and equipment related to the Development, in a decent, safe, and sanitary condition, in a tenantable and rentable state of repair, and in compliance with applicable leases and with Federal, State, and local statutes, regulations, ordinances, standards and codes.

Section 365.1104 Cost of Service EMERGENCY

The Owner shall not pay more for administrative, management, operating, and maintenance expenses than is reasonable given the location and size of the Development, the level of administration, operation, and maintenance required by the applicable Authority Rules and agreements, the requirements of the marketing plan, management plan, Tenant Selection Plan, the uniqueness or quality of available services or supplies, the presence of an emergency or other time constraint, the credit worthiness of suppliers and contractors, and any other relevant factors. The Owner shall solicit bids for administrative, operation and maintenance services if the Authority shall so require.

SUBPART L: TENANTS AND OCCUPANCY

Section 365.1201 Displacement EMERGENCY

Owners shall not cause the permanent displacement of any Tenants in a Development that receives a Loan for rehabilitation except as provided in Section 365.1202 of this Part. Pursuant to Section 65/10(g) of the Affordable Housing Act, Relocation Plans must comply with Section 507 of the Federal Housing and Community Development Act of 1987.

Section 365.1202 Relocation Plan EMERGENCY

- a) Approval. Before the Authority makes a Loan for rehabilitation of a Development under the Program and at such other time as shall be required by the Authority, the Authority shall require the Applicant to submit, for the Authority's approval, a plan for the

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temporary relocation or permanent displacement of Tenants whose dwelling units will be rendered uninhabitable by any renovation. In deciding whether to approve such plans, the Authority shall consider the purposes of the Program; the provisions of the Tenant Selection Plan; any applicable Federal and State statutes and regulations; and any other relevant matters.

- b) Benefits Provided For in the Relocation Plan. The benefits provided for under the relocation plan shall be available only to lawful residential Tenants (not owner-occupants or businesses) who are temporarily relocated or permanently displaced following submission of the Applicant's application for a Loan or the Applicant's control of the site, whichever comes later. The benefits provided for under the relocation plan shall not be available to Tenant if: the Tenant's income is eighty percent (80%) or more of the median family income, adjusted for family size; the Tenant commences occupancy after the later of Applicant's application for a Loan has been submitted to the Authority or the Applicant has obtained site control, provided such Tenant receives written notice of the impending rehabilitation and possible relocation or displacement prior to executing the lease; the Tenant has his/her tenancy terminated for violations of the terms and conditions of the lease, a violation of applicable Federal, State or local law, or other good cause; the Tenant is rejected for continued occupancy by the Applicant for reasons stated in the Tenant Selection Plan, except as provided below; the Tenant moves from the Development of his/her own accord; or other good cause exists to deny benefits as determined by the Authority. However, Tenants who are rejected by an Applicant for continued occupancy in the Development for reasons concerning family size restrictions or inability to afford rent levels charged after rehabilitation shall be eligible for permanent displacement benefits under the relocation plan.

- c) Contents of the Relocation Plan. The relocation plan shall set forth the policies and procedures to be used by the Applicant in temporarily relocating or permanently displacing Tenants including, but not limited to: provisions detailing the responsibilities of the Applicant and, if applicable, its managing agent; the basic actions to be taken in the relocation

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program; the acceptance and rejection criteria for determining eligibility for temporary relocation and permanent displacement benefits; the information to be provided to Tenants regarding the relocation program; provisions providing for determining Tenants' relocation needs; a description of relocation benefits; and, provisions detailing the implementation of the relocation plan, including a timetable for activities under the plan.

- d) Enforcement of Relocation Plan. The Owner is responsible for assuring that all the relocation requirements are met. The Authority, except in those cases where another governmental agency has a regulatory requirement to do so, will monitor the relocation activities to determine compliance with the requirements of this Section. The Authority may take whatever action is available to it under this Subpart or on the occurrence of a default under the Loan documents for violation of the Relocation Plan whether expressly stated therein or not.

Section 365.1203 Tenant Selection Plan
EMERGENCY

Before making a Loan under the Program, the Authority shall approve, where applicable, a Tenant Selection Plan submitted by the Applicant and setting forth the income limits for Tenants. In approving the Tenant Selection Plan, the Authority shall consider whether the selection procedures will be equitable considering the family size and circumstances of the Tenant; promote a heterogeneous mix of income levels to the extent appropriate; maintain the financial stability of the Development; and comply with the Authority's Rules. All housing financed by and all assistance from the program shall be available to all eligible persons regardless of race, national origin, ancestry, religion, creed, sex, age, familial or marital status, disability, or unfavorable military discharge.

Section 365.1204 Income and Rent Limits
EMERGENCY

- a) A Tenant's initial occupancy of a unit held available for rental to Low-Income Households and Very Low-Income Households shall be limited to persons and families initially meeting the income limits set forth in subsection (b) below. If a Tenant meeting income requirements at the time of initial occupancy

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subsequently fails to continue to meet such requirements, that failure shall not constitute non-compliance by that Tenant.

b) Determination of Income Limits

1) For all units reserved for Low-Income Households, the income limits shall be equal to 80% of the median family income with adjustments for family size, for the area in which the Development is located, as such median income is determined from time to time by the United States Department of Housing and Urban Development for purposes of Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437). The median income of the area of residence shall be attached to each application provided by the Authority and additionally shall be available upon request.

2) For all units reserved for Very Low-Income Households, the income limits shall be equal to 50% of the median family income with adjustments for family size, for the area in which the Development is located, as such median income is determined from time to time by the United States Department of Housing and Urban Development for purposes of Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437). The median income of the area of residence shall be attached to each application provided by the Authority and additionally shall be available upon request.

3) The Owner shall obtain from each prospective Tenant intending to occupy a unit held available for rental to Low-Income Households and Very Low-Income Households and on an annual basis thereafter a certification of income. The Owner shall verify each such certification in a manner approved by the Authority. The Owner shall submit each certification and verification thereof to the Authority by mail.

c) Determination of Rent Limits

1) Subject to subsection (c) (4) below, for all units reserved for Low-Income Households, Tenants occupying such units shall not be charged, including a utility allowance, rent in excess of

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thirty percent (30%) of the maximum allowable income as set forth in subsection (b) (1) above. The amount allocated for the Utility Allowance shall be determined by the Owner and approved by the Authority.

2) For all units reserved for Very Low-Income Households, Tenants occupying such units shall not be charged, including a Utility allowance, rent in excess of thirty percent (30%) of the maximum allowable income as set forth in subsection (b) (2) above. The amount allocated for the Utility Allowance shall be determined by the Owner and approved by the Authority.

3) The Owner shall submit to the Authority for the Authority's approval on an annual basis the rent schedule for the Development. Rents shall not be increased without the Authority's consent.

4) No Tenant shall be required to vacate or move from a unit reserved for Low-Income Households or Very Low-Income Households due to an increase in income exceeding the income limitations contained in this Subpart. The Owner may increase the rent for such units, for so long as the Tenant's income exceeds such limits, to an amount not to exceed the fair market rent as approved by the Authority. The Authority shall have the right to charge and collect rental surcharges on any unit leased by a Tenant who initially qualified as a Very Low-Income Household or Low-Income Household, but whose income thereafter exceeded such income limitations.

d) For units not reserved for Low-Income Households or Very-Low Income Households, the Owner may charge fair market rents, as determined by the Authority.

Section 365.1205 Commercial Facilities
EMERGENCY

a) Facilities. The Owner shall rent commercial facilities, if any, only to such Commercial Tenants, at such rental and for such purposes as have been approved by the Authority. In no event shall the space occupied by Commercial Tenants in the aggregate exceed five percent (5%) of the total square footage of the

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improvements in the Development (excluding land). In approving commercial facilities and Commercial Tenants, the Authority shall consider the Tenant Selection Plan, the Marketing Plan, the Management Plan, the nature of the prospective business, the credit history of the prospective Commercial Tenant, the benefit of the prospective business to Tenants of the Development, the prospective Commercial Tenant's ability to comply with applicable licensing and zoning requirements, the purposes of the Program and any other relevant matters.

- b) Compliance. The Owner shall be responsible for ensuring the Commercial Tenant's compliance with all applicable ordinances, zoning codes, licensing requirements, regulations, statutes and Authority Rules and agreements.

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NOTICE OF PUBLIC INFORMATION

1. Statute requiring agency to publish this information in the Illinois Register:
Name of Act: Illinois Department of Revenue Sunshine Act
Citation: Ill. Rev. Stat. 1991, ch. 127, par. 2001 (20 ILCS 2515/1)
2. Summary of information:
Index of Department of Revenue Sales and Excise Tax letter rulings issued for the Third Quarter of 1993.

The ruling letters are listed numerically with a brief synopsis under the following subjects:

Agents	Itinerant Vendors
Agricultural Producers and Products	Leasing
Assessments	Liquor Tax
Automobile Renting Tax	Local Taxes
Bingo	Mandatory Service Charges
Books and Records	Manufacturers
Bulk Sales	Manufacturing Machinery and Equipment
C.O.A.D.	Medical Appliances
Certificate of Registration	Miscellaneous
Cigarette Tax	Motor Fuel Tax
Claims for Credit	Motor Vehicles
Coal Fueled Devices	Nexus
Coal Mining Equipment	Nonprofit Institutions
Coins & Precious Metals	Occasional Sale
Computer Software	Oil Field Equipment
Construction Contractors	Penalties
Cooperative Associations	Pollution Control Facilities
Delivery Charges	Prepaid Sales Tax
Distillation Machinery	Products of
Drugs	Photoprocessing
Enterprise Zones	Property Tax
Exempt Organizations	Public Utility Taxes
Farm Machinery & Equipment	Real Estate Transfer Tax
Federal Excise Tax	Repairs
Financial Institutions	Replacement Vehicle Tax
Food	Returns
Governmental Bodies	Rolling Stock Exemption
Graphic Arts	Sale at Retail
Gross Receipts	Sale for Resale
Hotel Operators' Tax	Sale of Service
Interest	
Interstate Commerce	

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Sellers of Newspapers,
Magazines, Etc.
Signature
Special Order
Statute of Limitations
Tax Collection
Tax Increment Financing
Tax Rate
Telecommunications Excise Tax
Temporary Storage
Trade-In's
Use Tax
Vehicle Use Tax
Vendors

Copies of the ruling letters themselves are available for inspection and may be purchased for a minimum of \$1.00 per opinion plus 25¢ per page for each page over one.

The annual index of Sales and Excise Tax letter rulings (all four quarters) is available for \$3.00.

3. Name and address of person to contact concerning this information:

Margaret Forth
Legal Division
101 West Jefferson Street
Springfield, Illinois 62794
Telephone: (217) 782-6996

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AGENTS

93-0459 \$1.00 09/16/1993 When an auctioneer or agent is acting on behalf of a known or disclosed principal, the receipts from the sale are taxable to the principal provided the principal is a retailer.

93-0498 \$1.25 08/02/1993 Receipts from sales of tangible personal property made by an auctioneer or agent acting for a disclosed principal are taxable to the disclosed principal, providing that he is in the business of selling such tangible personal property at retail. The auctioneer or agent incurs no tax liability for such sales.

AUTOMOBILE RENTING OCCUPATION TAX

93-0373 \$1.50 07/02/1993 Persons who are engaged in the business of renting automobiles in Illinois under lease terms of one year or less are subject to the Automobile Renting Occupation and Use Tax. This tax is imposed at the rate of 5% of the gross receipts from such business.

93-0507 \$1.25 08/06/1993 Automobiles which are rented for periods of one year or less are subject to the Automobile Renting Occupation and Use Tax Act.

BOOKS AND RECORDS

93-0504 \$1.00 08/06/1993 The requirements for maintaining books and records are set out at 86 Ill. Adm. Code 130.801, and 130.805.

CLAIMS FOR CREDIT

93-0471 \$1.25 09/22/1993 The ROTA contains no provision for refunding the tax paid by a customer after there has been an arbitration settlement from a manufacturer on a defective automobile under an arbitration decision from the Better Business Bureau of Chicago.

COMPUTER SOFTWARE

93-0393 \$1.25 07/19/1993 Section 130.1935 details the manner in which computer software is taxed.

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- 93-0409 \$1.25 07/22/1993 Diakettea produced by a book bindery which contain cataloging information on only those books which are being bound by the bindery for the customer, and which are specifically formatted for the particular type of pc ayatem used by the purchaser, constitute custom computer software, and are not subject to tax.
- 93-0442 \$1.00 07/30/1993 If a license agreement meets the provisions of Section 130.1935 (a)(1)(A-E), it is not taxable. These sections have been modified somewhat, however. A license agreement need not meet the requirement of subsection (a)(1)(D) if the vendor can produce evidence that this is in fact his policy. Also, licensees which are perpetual in nature need not contain the requirement that the software be returned or destroyed at the end of the license period.
- 93-0445 \$1.00 07/30/1993 A licensee of software which meets all the provisions of Section 130.1935(a)(1)(A-E) is nontaxable.
- 93-0466 \$1.25 09/21/1993 Software maintenance agreements are not generally taxed. Instead, the seller of the maintenance agreement incurs tax on the cost price of the tangible personal property transferred incident to completion of the maintenance agreement. However, in some instances, maintenance contracts are taxable. If the maintenance agreement provides for updates of canned software, and those upgrades are not separately stated and taxed, the entire maintenance agreement is taxable as a sale of canned software.
- 93-0485 \$1.00 09/27/1993 Request for general information regarding sales of software and training.
- 93-0515 \$1.25 08/17/1993 Follow up letter regarding computer software license taxability.
- CONSTRUCTION CONTRACTORS
- 93-0374 \$1.25 07/02/1993 As the end user of tangible personal property in this State, a contractor is responsible for Use Tax (at a rate of 6.25%) on his cost price of tangible personal property purchased for incorporation into real estate.
- 93-0375 \$1.00 07/02/1993 To the extent that granite columns are permanently affixed to a building or structure, they will be considered to be a part of the real property. If this is the case, the contractor installing the granite columns will incur a Use Tax liability

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- based upon his cost price of materials incorporated into the real property.
- 93-0387 \$1.00 07/13/1993 This letter explains the Use Tax liabilities of out-of-State construction contractors using materials in Illinois which they have purchased out-of-State.
- 93-0390 \$1.25 07/15/1993 Construction contractors are the end users of the tangible personal property which they take off the market and permanently affix to real estate. They owe Use Tax on their cost price of such tangible personal property.
- 93-0493 \$1.00 09/29/1993 The purchase of office supplies and computer equipment used by a contractor in performance under the contract with the XXXX will be subject to Illinois sales tax.
- 93-0506 \$2.00 08/06/1993 This letter describes the application of the Illinois sales tax laws to contracts to sell and install telecommunications systems.
- 93-0516 \$1.25 08/17/1993 If a construction contractor buys ready mix concrete and permanently affixes it to real estate in furtherance of a construction contract, he owes Use Tax on the cost price of the ready mix.
- DELIVERY
- 93-0410 \$1.00 07/22/1993 Charges for delivery of ready-mix concrete (which must be constantly churned for delivery to a job site) are always includable in gross receipts subject to Retailers' Occupation Tax.
- 93-0433 \$1.25 07/29/1993 Unless the buyer and seller have a separate agreement for delivery charges, they are considered part of the selling price of the goods and are subject to Retailers' Occupation Tax. Separate billing of delivery charges on an invoice is insufficient evidence of a separate agreement for such charges, and under these conditions, the delivery charges will be subject to tax.
- DRUGS
- 93-0391 \$1.00 07/19/1993 Drugs are any pill, powder, potion, salve, or other preparation intended by the manufacturer for human use and which purport on the label to have medicinal qualities.

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ENTERPRISE ZONES

93-0384 \$1.25 07/08/1993 The expanded enterprise zone manufacturing machinery and equipment exemption applies sales of tangible personal property to be used or consumed within an enterprise zone [by a certified business enterprise] or subject to the provisions of Section 5.5 of the Enterprise Zone Act, all tangible personal property to be used or consumed by any high impact business, in the process of manufacturing or assembling tangible personal property for wholesale or retail sale or lease. Many items which will not qualify under the ordinary manufacturing exemption qualify under this expanded exemption.

93-0402 \$1.25 07/20/1993 The enterprise zone building materials exemption cannot be claimed UNLESS the purchaser buys qualifying materials from a retailer located in the jurisdiction that created the enterprise zone into which the materials will be incorporated. At a minimum, this requires that a retailer be physically present in and registered to a location in the jurisdiction that created the enterprise zone and accept purchase orders at that location.

93-0481 \$1.00 09/24/1993 Purchases made by a manufacturing business enterprise may qualify for exemption under the expanded manufacturing machinery and equipment exemption, 86 Ill. Adm. Code 130.1951(b), enclosed. This exemption would allow a certified manufacturing business enterprise located in an enterprise zone to purchase safety equipment free from tax, that would not otherwise be exempt under the standard manufacturing exemption.

EXEMPT ORGANIZATIONS

93-0416 \$1.50 07/26/1993 A contractor working on behalf of an exempt entity cannot purchase blueprints free from tax under 130.2075(d). The blueprints themselves do not become a part of the real property or the building being constructed from the blueprints.

93-0450 \$1.50 09/07/1993 This letter sets out the application of the Illinois sales tax laws to purchases of food and supplies by an entity which operates cafeterias for schools.

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FARM MACHINERY AND EQUIPMENT EXEMPTION

93-0383 \$1.50 07/08/1993 The farm machinery and equipment exemption applies only to equipment and machinery that is used over 50 percent of the time in production agriculture.

93-0386 \$1.25 07/12/1993 Batteries for a tractor which is used primarily in production agriculture qualify for the farm machinery and equipment exemption.

93-0413 \$1.25 07/22/1993 Equipment purchased by a co-op elevator cannot qualify for the Farm Machinery and Equipment exemption because a co-op elevator is not engaged in production agriculture.

93-0441 \$1.00 07/30/1993 If equipment is used primarily (over 50% of the time) in production agriculture, as defined in Section 130.305, it is exempt from tax.

93-0451 \$1.00 09/08/1993 The various regulations pertaining to agricultural exemptions include Section 130.305 (Farm Machinery and Equipment), Section 130.1905 (Agricultural Producers), Section 130.1945 (Agricultural Cooperatives), Section 130.1955 (Farm Chemicals), Section 130.2110 (Sellers of Seeds and Fertilizer), and Section 130.2100 (Sellers of Feeds and Breeding Livestock).

93-0469 \$1.25 09/21/1993 The Retailers' Occupation Tax and the Use Tax contain an exemption for "Farm Machinery and Equipment." This exemption is explained in greater detail at 86 Ill. Adm. Code 130.305. The exemption applies to sales (or purchases) of machinery and equipment which are used primarily (over 50% of the time) in "production agriculture." "Production agriculture" is defined in Section 130.305(b). No item necessarily qualifies, in and of itself. An item's eligibility for the exemption, rather, hinges on the manner in which the item is used.

93-0484 \$1.00 09/24/1993 ATV's do not qualify for the farm machinery and equipment exemption.

FOOD

93-0369 \$1.00 07/01/1993 Non-alcoholic drink mixes which are sold in a store that sells food primarily in bulk and which does not contain facilities for on premises consumption, is taxable at the low rate.

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93-0411 07/22/1993 A country club that provides free meals to its employees, at no charge whatsoever, incurs a Use Tax liability on such food. Such food is taxable at the low rate of tax and is based, in the absence of evidence establishing a lower figure, on a charge of 75 cents per meal.

FOOD, MEDICINE AND MEDICAL APPLIANCES

93-0458 09/16/1993 Products that qualify as food, medicines and medical appliances are subject to Illinois Retailers' Occupation Tax liability at the rate of 1%.

GAMES OF CHANCE

93-0519 08/17/1993 The use of a pull tab dispenser which is, basically, a slot machine that issues pull tabs instead of money, is prohibited under the Pull Tabs and Jar Games Act.

GRAPHIC ARTS EXEMPTION

93-0372 07/02/1993 Machinery and equipment used primarily in graphic arts production may be purchased free from Retailers' Occupation Tax.

93-0463 09/20/1993 The graphic arts machinery and equipment exemption does not include consumable supplies. See Section 130.325(b)(2).

GROSS RECEIPTS

93-0406 07/22/1993 Mandatory service charges separately stated on customers' bills for the purchase and consumption of food and beverages purchased at retail from a retailer are exempt from tax to the extent that the proceeds of the service charge are in fact turned over as tips or as a substitute for tips to the employees who participate directly in preparing, serving, hosting or cleaning up the food or beverage function with respect to which the service charge is imposed.

93-0418 07/26/1993 The buyer premium charged by a sales agent is includable in the gross receipts from the purchase for purposes of self-assessing Use Tax liability. Use Tax liability is based upon the cost price of tangible personal property purchased at retail from a retailer. Since the buyer premium is not a service charge

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or fee to which the purchaser separately agrees, the amount must be included as part of the cost price of the goods purchased.

93-0429 07/29/1993 Whether or not a Federal tax is deductible depends upon where the incidence of the tax is imposed based on the language of the particular Federal tax statute.

93-0430 07/29/1993 The sales tax consequences of parts transferred incident to warranty work depend on the type of warranty agreement.

93-0444 07/30/1993 Because the legal incidence of the Chicago Soft Drink Tax is upon the consumer, with the retailer merely acting as a collector of the tax, the tax is not included in the gross receipts subject to Retailers' Occupation Tax.

93-0482 09/24/1993 Whether or not the value of a coupon is subject to tax is determined by whether a retailer receives reimbursement for the coupon value. If he does not, the value of the coupon is not taxable. This is often the case in "buy one, get one free" type discounts.

93-0483 09/24/1993 Retailers reporting Retailers' Occupation Tax liability by the accrual method, but wishing to switch to the gross receipts method of reporting should follow the "wash-out" procedure described in Section 130.401(a).

93-0512 08/10/1993 A bad debt deduction is only available for a retailer filing on the gross sales basis who has sold goods and received no payment for the goods purchased or has determined that an account is uncollectible. The bad debt deduction can only be taken in the month that the bad debt is charged off the retailer's books for Federal Income Tax purposes.

93-0517 08/17/1993 If a retailer receives full or partial reimbursement for a coupon, the value of the coupon is subject to Retailers' Occupation Tax. If a customer pays for his purchase partly with Food Stamps and partly with a coupon for which the retailer will receive reimbursement, the value of the coupon is subject to tax.

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HOTEL OPERATORS OCCUPATION TAX

93-0514 08/10/1993 No exemption from Hotel Operators' Occupation Tax is available without documentation that the guest was issued a diplomatic tax exemption card by the United States Department of State.

INTERSTATE COMMERCE

93-0440 07/30/1993 If the purchaser does not take possession or control of the property purchased, in Illinois and the sellers are required under the terms of the purchase contract to make delivery to point outside the State of Illinois, not to be returned to a point inside the State, the sale is exempt as a transaction in interstate commerce.

93-0455 09/14/1993 Where an Illinois retailer is required to make delivery outside Illinois under the terms of the sale agreement, the sale is considered to be a sale in interstate commerce and is exempt from Illinois sale tax.

LEASING

93-0405 07/22/1993 A lessor under true leases owes Use Tax "up front" on the cost price of the item purchased for leasing purposes.

93-0414 07/23/1993 Lessors under "true leases" incur a Use Tax liability up front on the cost price of the items purchased for leasing purposes.

93-0427 07/29/1993 The lessor of tangible personal property under a true lease in Illinois, is deemed the end user of the property to be leased. (Illinois Administrative Code Sec. 130.220). As the end user of tangible personal property located in Illinois, the lessor owes use tax on his cost price of such property. Since the lessor has already discharged the tax liability with respect to the leased property, no tax is imposed on rental receipts by the State of Illinois. Consequently, the lessee incurs no tax liability.

93-0438 07/30/1993 When a lessor, under a conditional sales contract, has a separate agreement with the buyer regarding a special service provided in relation to the property sold, which is the subject of a separate agreement, the fees for which are included in the monthly payments for the property, the fees for the special

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service are not included in the gross receipts subject to sale. See Section 130.450.

93-0468 09/21/1993 Persons who lease tangible personal property to others under "true" leases owe Use Tax up front on the cost price of the tangible personal property which is leased.

93-0490 09/28/1993 For purposes of the Illinois sales tax laws, a true lease generally has no buy out provision at the close of the lease. If a buy out provision does exist, it must be a fair market value buy out option in order to maintain the character of the true lease. The lessor of tangible personal property under a true lease in Illinois, is deemed the end user of the property to be leased.

93-0510 08/06/1993 A lessee of an automobile cannot trade-in a leased vehicle which the lessee does not own. The lessee has no equity or ownership in the vehicle by virtue of the lease.

LIQUOR TAX

93-0422 07/27/1993 A person providing equipment and ingredients for customers who wish to brew beer for their own consumption and not for resale is not a "manufacturer" or "importing distributor" who is subject to the gallonage tax.

LOCAL TAXES

93-0382 07/08/1993 Under the Municipal code, 65 ILCS 5/8-11-2, persons engaged in the business of distributing, supplying, or selling electricity for use or consumption within the corporate limits of a municipality, are taxed on the gross receipts from that activity at a rate not to exceed 5%. No exclusion from gross receipts for taxes collected under other tax acts is provided by this municipally imposed utilities tax.

93-0392 07/19/1993 The Department has determined that the most important element in the occupation of selling is the seller's acceptance of the buyer's purchase order. Consequently, local taxes are incurred if the seller accepts the buyer's purchase order in a municipality which has imposed an HRMROT. Also, when the purchase order has been accepted outside this State but the order is filled from an inventory of the retailer which is located in a

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jurisdiction imposing an HRMROT, the HRMROT of that jurisdiction is applicable to the transaction.

93-0400 \$1.00 07/20/1993 The Kane County Motor Fuel Tax, authorized by P.A. 86-16, became effective on June 1, 1991.

93-0404 \$1.00 07/22/1993 The Home Rule Municipal Retailers' Occupation Tax is incurred when "selling" -- the retailer's acceptance of the buyer's purchase order -- occurs in a jurisdiction which has imposed a tax.

93-0428 \$1.00 07/29/1993 Vehicle dealers in the collar counties are required to collect and remit the Chicago Home Rule Use Tax on vehicles that are registered to locations in the City of Chicago.

93-0437 \$1.25 07/30/1993 In January, 1990, when sales tax reform was instituted, the Municipal Retailers' Occupation Tax was abolished. The State Retailers' Occupation Tax was raised from 5% to 6.25%, and a portion of the increase was returned to municipalities.

93-0475 \$1.00 09/22/1993 The appropriate rate of tax for a retail sale would be determined by the location of purchase order acceptance. In the absence of purchase order acceptance in Illinois, you would then look to the location of inventory maintained within the State.

93-0503 \$1.25 08/06/1993 For purposes of administering the Home Rule Municipal Retailers' Occupation Tax, the Department has determined that "selling" occurs where the retailer accepts the buyer's purchase order. A retailer incurs an HRMROT, consequently, if he accepts the buyer's purchase order in a jurisdiction that has imposed such a tax. See Section 270.115 (b)(1). Also, if the order is accepted outside the State, but is filled from an inventory of the retailer which is located in a jurisdiction imposing an HRMROT, the HRMROT of the jurisdiction in which the inventory is located is incurred. See Section 270.115 (b)(3).

MANUFACTURING

93-0407 \$1.00 07/22/1993 "Manufacturing" can include photoprocessing if the products of photoprocessing are sold.

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MANUFACTURING MACHINERY AND EQUIPMENT EXEMPTION

93-0376 \$1.25 07/06/1993 Hydraulic fluid is not a qualifying type of manufacturing machinery or equipment. Rather, it constitutes a supply and is taxable.

93-0415 \$1.25 07/23/1993 Xxx Xxxxx (CAD/CAM) equipment may qualify for exemption under the Manufacturing Machinery and Equipment exemption if it is used primarily to manufacture stripping products for resale. However, if the products manufactured are primarily for the manufacturer's own use rather than resale, the equipment will not qualify for exemption.

93-0420 \$1.25 07/26/1993 If the cutting dies are being purchased by a manufacturer or lessor for use in the on-line manufacturing of corrugated boxes for wholesale, retail sale or lease, this equipment may qualify for the manufacturing exemption.

93-0426 \$1.50 07/29/1993 A gas-powered boiler used primarily to produce steam that will in turn be used to heat and effect a direct change upon the product being manufactured can qualify as exempt manufacturing machinery and equipment so long as this is the primary use for the boiler. If however, the boiler system is used primarily for a non-exempt purpose, such as general plant heating, it will not qualify for exemption.

93-0432 \$1.00 07/29/1993 Eligibility for exemption under the Manufacturing Machinery and Equipment Exemption depends upon whether the equipment is primarily used in a qualifying manner. It is not a prerequisite that the equipment be permanently installed.

93-0457 \$1.00 09/14/1993 Only machinery and equipment used primarily in direct on line manufacturing will qualify for exemption. Equipment used primarily in pre-production and post-production activities will not qualify for exemption.

93-0461 \$1.00 09/16/1993 Tire retreading machinery and equipment may qualify for the manufacturing machinery and equipment exemption.

93-0462 \$1.00 09/16/1993 Sand, oxides, fluxes, cores, molding, parting cement, crucibles, furnace blocks and covers, and petro-bond used in the production of castings can qualify for the manufacturing machinery and equipment exemption.

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93-0464 \$1.25 09/21/1993 The Manufacturing Machinery & Equipment exemption found at 86 Ill. Adm. Code 130.330 contains no exemption for gas, electricity and water used in the manufacturing process.

93-0465 \$1.25 09/21/1993 Several principles restrict the manufacturing machinery and equipment exemption to specific types of quality control and testing equipment. The testing function must be an "integral part of the production flow." In order to be considered an "integral part of the production flow," the testing must be performed on-line. Additionally, the exemption does not extend to non-powered, hand-held tools which perform testing functions.

93-0467 \$1.25 09/21/1993 The Retailers' Occupation Tax contains an exemption for machinery and equipment used primarily (over 50 percent) in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. This exemption extends to replacement parts for qualifying machinery.

93-0474 \$1.25 09/22/1993 The slaughter of animals and subsequent processing into meat products for wholesale or retail sale is a manufacturing process.

93-0478 \$1.00 09/22/1993 Filter cartridges that are used on qualifying manufacturing machinery and equipment can also qualify for the Manufacturing machinery and equipment exemption.

93-0502 \$1.00 08/06/1993 The Manufacturing Machinery And Equipment Exemption is limited to machinery and equipment. Gases are not machinery and they are not equipment. Bottled gases are consumable supplies and they do not qualify for the exemption.

93-0518 \$1.00 08/17/1993 Chemical product used to deoxidize or desmut aluminum castings is a consumable supply and does not qualify for exemption as manufacturing machinery and equipment.

MEDICAL APPLIANCES

93-0371 \$1.50 07/02/1993 Items which are intended by the manufacturer for use in directly substituting for a malfunctioning part of the body qualify as medical appliances subject to a reduced rate of tax.

93-0380 \$1.25 07/08/1993 Low-vision reading systems, comprised of a freestanding piece of equipment about the size of a personal computer which the purchaser uses in his home or similar location, do not constitute a "medical appliance." A medical appliance must

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directly replace a malfunctioning part of the body, and in doing so, must be the type of product that will remain with the body.

93-0491 \$1.25 09/28/1993 The regulation defines medical appliance as "an item which is intended by its manufacturer for use in directly substituting for a malfunctioning part of the body." This includes artificial limbs, orthopedic braces, wheelchairs, heart pacemakers, dialysis machines, hearing aids, eyeglasses and other similar products which substitute for a malfunctioning part of the body.

MISCELLANEOUS

93-0388 \$1.00 07/14/1993 The rules governing the taxability of manufacturer issued discount coupons are found at 86 Ill. Adm. Code 130.2125.

93-0480 \$1.25 09/22/1993 Survey letter response.

93-0489 \$1.25 09/28/1993 Illinois does not tax airline tickets or the sale of transport services by airplane.

NEWSPRINT AND INK

93-0398 \$1.00 07/19/1993 In order to be considered exempt under the newsprint and ink exemption, a publication must be published at least 2 times per year.

93-0487 \$1.00 09/27/1993 The newsprint and ink exemption is not extended to other types of media such as phonograph records or audio cassettes. Therefore, the sale of audio cassettes containing financial news to subscribers will be subject to the Retailers' Occupation Tax.

93-0505 \$1.00 08/06/1993 The XXXXXX qualifies as a magazine. The publication is printed monthly and lists information regarding houses sold in certain areas during the preceding month.

93-0513 \$1.25 08/10/1993 In making the determination as to whether a publication qualifies as a magazine for purposes of the Newsprint and Ink exemption, there is one test which must be met and several other factors which will be considered. The test which must be met is the publication must come out periodically and must be published more frequently than on an annual basis. This

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periodicity test is met where the magazine is a weekly or monthly or even a quarterly or semi-annual publication.

NEXUS

93-0397
\$1.00

07/19/1993 This letter describes the types of nexus that are required before Illinois can mandate registration of out-of-State Use Tax collectors.

93-0417
\$1.25

07/26/1993 Although the presence of software in this State that is subject to a valid license will not result in nexus for purposes of other sales made into the state, the software itself is subject to Use Tax.

93-0424
\$1.00

07/27/1993 Simple delivery into a state is not sufficient to establish nexus with that state.

93-0435
\$1.25

07/30/1993 Out-of-State retailers must determine their tax liability, if any, based upon their contacts with State.

93-0446
\$1.25

07/30/1993 Out-of-State retailers must determine their tax liability, if any, based upon their contacts with State.

93-0449
\$1.25

09/07/1993 Out of state retailers must determine their tax liability, if any, based upon their contacts with Illinois.

93-0456
\$1.25

09/14/1993 Out-of-State "retailers maintaining a place of business in the State," however, are required to register and collect the Use Tax on their Illinois sales. An out-of-State retailer is considered to "maintain a place of business" in Illinois if he has any of the types of "nexus" listed in the enclosed copy of Section 150.201(i). The recent Quill case further clarified that a retailer must have a physical presence in a state before the state can impose tax collection obligations on him.

93-0470
\$1.25

09/22/1993 Out of state retailers must determine their tax liability, if any, based upon their contacts with state.

93-0473
\$1.25

09/22/1993 Out of state retailers must determine their tax liability, if any, based upon their contacts with state.

93-0486
\$1.25

09/27/1993 Out of state retailers must determine their tax liability, if any, based upon their contacts with state.

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93-0499
\$1.25

08/02/1993 An out-of-State lessor which purchased a company in 1987, thereby acquiring one copier on lease in the State, and which had no physical presence in the State during 1987, was not required to register for sales tax purposes. Under these circumstances, while Quill's Due Process "minimum contacts" prong may arguably be met, the Commerce Clause prong requiring physical presence is not met.

PHOTOPROCESSING

93-0431
\$1.25

07/29/1993 Persons who sell the products of photoprocessing, including slides, are considered to be retailers and incur a Retailers' Occupation Tax liability on their sales.

POLLUTION CONTROL FACILITIES

93-0419
\$1.25

07/26/1993 The XXXX XXXX XXX-X Steel Grit Blast and Recovery System, Dust Collector and Classifier are used in lead abatement projects in order to minimize the amount of lead particulates and contaminants released into the air. This system can qualify for the Pollution Control Facilities Exemption if used primarily in an exempt manner as described.

93-0434
\$1.00

07/30/1993 The pollution control facilities exemption does not extend to equipment having as its primary purpose, financial benefit or monetary gain derived from the use of the equipment.

93-0477
\$1.25

09/22/1993 Vacuum trucks used to recover releases of oil spills, chemical spills and other releases into water or atmosphere can qualify for the Pollution Control Facilities exemption.

93-0488
\$1.75

09/27/1993 In order to qualify for the Pollution Control Facilities exemption, a facility must be a "system, method, construction, device or appliance appurtenant thereto sold or used or intended for the primary purpose of eliminating, preventing, or reducing air and water pollution, ... or for the primary purpose of treating, pretreating, modifying or disposing of any potential solid, liquid or gaseous pollutant which if released without such treatment, pretreatment, modification or disposal might be harmful, detrimental or offensive to human, plant or animal life, or to property."

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93-0511 08/06/1993 Equipment used for the prevention of ground water
\$1.25 pollution due to gasoline leaks or seepage may qualify for
Pollution Control Facilities Exemption.

RECORDS

93-0447 07/30/1993 Section 140.701 requires servicemen to keep "all sales
\$1.25 invoices, purchase orders, merchandise records and requisitions,
inventory records .. and all other records pertaining to any and
all purchases and sales of goods whether or not the supplier or
serviceman believes them to be taxable under the Act." The
Department cannot waive this requirement for servicemen wishing to
estimate their cost price of drugs based on an historical formula,
rather than keeping records of the actual cost price.

REGISTRATION

93-0396 07/19/1993 Persons engaged exclusively in wholesale selling are
\$1.00 not required to register.

93-0403 07/21/1993 Section 2a of the Retailers' Occupation Tax Act
\$1.00 requires that: "The application shall contain an acceptance of
responsibility signed by the person or persons who will be
responsible for filing returns and payment of the taxes due under
this Act."

RETURNS

93-0385 07/09/1993 This letter describes the circumstances under which a
\$1.00 quarter monthly filer may change his filing schedule.

93-0395 07/19/1993 Persons may change their quarterly filing status to a
\$1.25 less frequent status only when their liability falls below certain
monetary thresholds.

ROLLING STOCK

93-0394 07/19/1993 This letter explains the requirements a carrier must
\$1.00 meet before claiming the rolling stock exemption.

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SALE AT RETAIL

93-0479 09/22/1993 In general, as a retailer, Illinois sales will be
\$1.25 taxable at the rate appropriate for the retailer's location.
Where the purchaser takes possession of the property in Illinois,
the sale is considered to be a taxable Illinois sale.

93-0520 08/31/1993 Sale of catalogs by a retail chain to sales
\$1.50 representatives who will give the catalogs to potential customers
are taxable retail sales.

SALE FOR RESALE

93-0381 07/08/1993 The best method of documenting a sale for resale, is
\$1.25 to include on the Certificate of Resale, the purchaser's Illinois
registration or resale number. If the purchaser does not have an
Illinois registration or resale number, the seller may allow the
purchaser to demonstrate that the transaction is a sale for resale
through other evidence. However, an Illinois auditor is much more
likely to scrutinize such a transaction and may determine that the
exemption is not available.

93-0492 09/29/1993 In a drop shipment situation, a Resale number can be
\$1.00 utilized in order to document a valid Illinois Certificate of
Resale for a supplier that has nexus with Illinois.

93-0501 08/05/1993 It is improper for a photoprocessor to provide a
\$1.25 Certificate of Resale for purchases of chemicals and supplies used
in photoprocessing. Certificates of Resale can be used ONLY for
items which will be incorporated into the final product which is
transferred to the customer. This would include the
photoprocessor's purchases of paper.

SALE OF SERVICE

93-0443 07/30/1993 Veterinarians incur Service Occupation Tax when
\$1.50 transferring tangible personal property as an incident of the sale
of service. However, they are subject to Retailers' Occupation
Tax when making retail sales of over-the-counter products or
products that are readily available at pet stores without a
prescription.

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93-0476 09/22/1993 This letter describes the Service Occupation Tax Act
\$1.25 in general terms.

SERVICE OCCUPATION TAX

93-0378 07/07/1993 This letter details the manner in which a registered
\$1.75 or unregistered de minimus serviceman handles his tax liability
after January 1, 1993.

93-0389 07/15/1993 P.A. 87-876, effective January 1, 1993, modified the
\$1.25 Service Occupation Tax, so that replacement parts for exempt
machinery which are transferred incident to service are exempt
from the SOT. It is no longer required that those parts be
specially fabricated by the serviceman in order to be exempt from
SOT.

93-0399 07/19/1993 This letter describes the recent changes in the
\$1.25 Service Occupation Tax and the manner in which servicemen can now
handle their SOT liability.

93-0401 07/20/1993 The sale of photocopies from a photocopying machine is
\$1.00 subject to the Service Occupation Tax.

93-0412 07/22/1993 The Service Occupation Tax is triggered upon the
\$1.50 transfer of tangible personal property incident to service. If no
tangible personal property is transferred, no service occupation
tax is incurred.

93-0454 09/14/1993 If signs are specially produced for the purchaser in
\$1.50 such a way that they have no value to others than the purchaser,
they are subject to the Service Occupation Tax.

93-0497 08/02/1993 Serviceman may calculate his tax base in one of four
\$1.50 ways: 1. separately stated selling price; 2. 50% of
serviceman's entire bill; 3. SOT on his cost price if he is a
registered de minimus serviceman (effective January 1, 1993, P.A.
87-876); or, 4. Use Tax on his cost price if he is an
unregistered de minimus serviceman.

TELECOMMUNICATIONS EXCISE TAX

93-0379 07/08/1993 Retailers selling telecommunications in this State are
\$1.00 subject to the Telecommunications Excise Tax in the amount of 5%
of their gross charges.

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07/30/1993 The regulations describe the types of activities that
will be taxable under the Telecommunications Excise Tax when
provided in connection with originating or receiving
telecommunications.

93-0436
\$1.25

09/09/1993 A database provider offering on-line search capacity
to customers does not incur the Telecommunications Excise Tax as
long as the database provider charges only for the search, and
does not charge for the telecommunications transmission charges.
If the database provider does charge for transmission of
information, and disaggregates the transmission charge from the
inquiry charge, then only the transmission charge is subject to
the tax.

93-0452
\$1.25

09/14/1993 A convenience store retailer selling a telephone
calling card which, for a preset price, entitles him to make calls
to anywhere in the world from anywhere in the U.S., is not subject
to Retailers' Occupation Tax. The card represents an intangible,
i.e., the right to make phone calls. The Retailers' Occupation
Tax applies only to sales of tangible personal property.
Additionally, the retailer is not subject to the
Telecommunications Excise Tax, since he is not a "retailer" making
"sales at retail," as those terms are defined in the
Telecommunications Excise Tax.

93-0453
\$1.25

09/22/1993 Transceiver providing for transmission and reception
of radio frequency data signals may be subject to
Telecommunications Excise Tax.

93-0472
\$1.50

08/06/1993 Invested capital tax is a tax imposed under the
Messages Tax Act, 35 ILCS 610 (1992 State Bar Edition), upon
persons engaged in the business of transmitting messages and
acting as retailers of telecommunications as defined in the
Telecommunications Excise Tax Act, 35 ILCS 630 (1992 State Bar
Edition).

93-0508
\$1.50

08/06/1993 A telecommunications retailer providing only exempt
services such as coin-operated telecommunications services, may
obtain a resale number which will enable the provider to make
purchases free from tax, but will not require the filing of
monthly returns since no taxable telecommunications services are
being sold.

93-0509
\$1.25

DEPARTMENT OF REVENUE

NOTICE OF PUBLIC INFORMATION

1993 THIRD QUARTER SUNSHINE INDEX

TEMPORARY STORAGE

08/04/1993 The temporary storage exemption is available only when tangible personal property which is acquired outside this State and subsequent to being brought into this State and stored here temporarily, is used solely outside this State.

USE TAX

07/26/1993 Where shipping charges are determined to be agreed upon separately from the selling price of the property purchased, the shipping charges need not be included in the Use Tax base for self assessing Use Tax on the property purchased.

07/30/1993 This letter explains the Use Tax obligations of construction contractors that permanently affix tangible personal property to real estate.

09/16/1993 A non-resident individual moving to Illinois, does not incur Use Tax liability on tangible personal property acquired outside the state so long as that property has been used outside the state for at least three months.

08/02/1993 While retailers must normally provide customers with receipts showing the tax as a separate item, this procedure is not required in the case of vending machines.

UTILITIES

07/22/1993 The sale of gas and electric services to residential or industrial users is not taxable under the Retailers' Occupation Tax. Rather, such sales are governed by the Gas Revenue Tax and the Public Utilities Revenue Tax, respectively.

VETERINARIANS

07/30/1993 When a veterinarian transfers any type of tangible personal property to a service customer incident to service, he is subject to the Service Occupation Tax. This would include (but is not limited to) drugs, bandages, splints, prescription food, food used while an animal is in the vet's care or during kennelling, and sutures.

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

SECOND NOTICES RECEIVED

The following second notices were received by the Joint Committee on Administrative Rules during the period of January 11, 1994 through January 17, 1994, and have been scheduled for review by the Committee at its February 15, 1994 meeting. Other items not contained in this published list may also be considered. Members of the public wishing to express their views with respect to a rule should submit written comments to the Committee at the following address: Joint Committee on Administrative Rules, 700 Stratton Office Bldg., Springfield IL 62706.

Second Notice Expires	Agency and Rule	Start of First Notice	JCAR Meeting
2/26/94	Department of Commerce and Community Affairs, Illinois Promotion Act Programs (14 Ill Adm Code 510)	9/10/93 17 Ill Reg 14318	2/15/94
2/26/94	Department of Commerce and Community Affairs, Enterprise Zone Program (14 Ill Adm Code 520)	7/2/93 17 Ill Reg 9791	2/15/94
2/26/94	Department of Commerce and Community Affairs, Emergency Shelter Grants Program (47 Ill Adm Code 160)	10/1/93 17 Ill Reg 15747	2/15/94
2/26/94	Illinois Liquor Control Commission, The Illinois Liquor Control Commission (11 Ill Adm Code 1813)	11/29/93 17 Ill Reg 20094	2/15/94
2/26/94	State Board of Education, Sprinkler Systems (23 Ill Adm Code 170)	10/22/93 17 Ill Reg 18419	2/15/94
2/26/94	Secretary of State, Literacy Grant Program (23 Ill Adm Code 3040)	10/22/93 17 Ill Reg 18441	2/15/94

EXECUTIVE ORDER

94-1

THE ILLINOIS TASK FORCE ON SCHOOL-TO-WORK TRANSITION

Whereas, the people of Illinois have the right to expect, and deserve to have, a workforce preparation system that exposes our children to the connection between learning and earning at an early age, provides our teenagers and young adults with a smooth transition from school to work and facilitates life-long learning for all who wish to avail themselves of such opportunities; and

Whereas, the competitiveness of Illinois business enterprises in the global economy is increasingly dependent upon the skills and aptitudes of the workforce; and

Whereas, the majority of the jobs in the year 2000 will not require a four year baccalaureate degree, but those with long-term growth potential will require a level of technical and analytical skills and training beyond that traditionally provided by a high-school diploma; and

Whereas, many of the three-fourths of our young people who enter the workforce without baccalaureate degrees do not possess the academic, technical, cognitive or quantitative skills necessary to succeed in the changing workplace; and

Whereas, the portability of credentials among industries and occupations can only be achieved through effective linkages between the private sector and educational institutions to establish skill standards and the methods to assess and document competence and mastery of those skills; and

Whereas, the State of Illinois has an affirmative responsibility to assist the people of Illinois in redefining where education takes place and in gaining access to all pathways that are necessary to obtain the skills that will ensure their success in the transition from school to work; and

Whereas, the current array of state and federal resources and services do not sufficiently represent a comprehensive and coherent system to help youth and young adults acquire knowledge, skills, abilities, and information about and access to the labor market necessary to make an effective transition from school to career-oriented work or to further education and training; and

Whereas, state and federally funded services intended to enhance employability and skills development should be organized and delivered in an efficient and systematic fashion to meet the challenges involved in building and maintaining a quality workforce by combining private sector job opportunities and our education and training system into an integrated network;

Therefore, I, Jim Edgar, order the following:

I. CREATION

There shall be established the Illinois Task Force on School-to-Work Transition.

II. PURPOSE AND DUTIES

The duties of the Task Force shall include, but not be limited to, the following:

A. The primary responsibility of the Task Force shall be to oversee and guide various public and private entities in planning the design and development of a statewide school-to-work system. This system should offer students access to performance-based education and training programs that will enable them to earn portable credentials, prepare them for jobs in high-skill careers, and increase opportunities for high wages and further education.

B. The Task Force shall serve as a coordinating body and, on behalf of the Governor, shall direct the administration and utilization of federal planning funds made available to the state for the design of school-to-work systems.

C. In its coordinating capacity, the Task Force shall ensure that the following objectives are adhered to in the design and development of a school-to-work system:

* A system that is demand-driven, responsive to the needs of the marketplace, and includes the private sector (business and labor) and the educational community as full partners in providing high-quality, work-based learning experiences to students.

* A system that is designed to improve the knowledge and skills of youth by integrating academic and occupational learning, integrating school-based and work-based learning, and building effective linkages between secondary and post-secondary education and training.

* A system that motivates youth and young adults, especially low-achieving youth and drop-outs, to stay in or return to school by providing enriched learning experiences that will enhance the ability to obtain good jobs.

* A system that helps students attain academic and occupational skill standards developed in conjunction with the private sector.

* A system that promotes, among parents, students, secondary and postsecondary educational institutions, private and public employers, labor organizations, government and community groups, the formation of local education and training systems that link the worlds of school and work.

* A system that recognizes the need for different areas and communities within our state to design and implement differing approaches to a system.

III. MEMBERSHIP

A. The Task Force shall consist of fourteen members and a Chairperson appointed by the Governor.

B. The members shall be representatives of business, organized labor, the public, and the Chairs of the State Board of Education, Illinois Community College Board, the Board of Higher Education, the Illinois Job Training Coordinating Council, the Illinois Council on Vocational Education.

C. The Lieutenant Governor shall Chair the Task Force.
D. Members will serve without compensation but may be reimbursed for expenses.

E. The Task Force will be provided staff support services by the Office of the Governor, the Office of the Lieutenant Governor, and the agencies of state government directly involved in the provision of education and training services.

F. The Task Force will release an interim report to the Governor by March 31, 1994, and a final report by January 1, 1995.

IV. EFFECTIVE DATE

This Executive Order Number One (1994) shall be effective upon filing with the Secretary of State and shall be repealed effective January 1, 1995.

Issued by the Governor January 11, 1994.

Filed with the Secretary of State January 12, 1994.

94-2

EXECUTIVE ORDER CREATING THE ILLINOIS COMMISSION ON REGULATORY REVIEW

Whereas, Illinois must be ever watchful of erecting barriers that could inhibit or threaten a growing Illinois economy; and

Whereas, an examination of issues revolving around government regulations is needed to address those rules that might be unjustified and unreasonable; and

Whereas, conflicts between job creation and appropriate regulatory activities should be adjudicated and compromised to maximize Illinois' economic advantage; and

Therefore, I, Jim Edgar, order the following:

I. CREATION

There shall be established the Illinois Commission on Regulatory Review.

II. PURPOSE

The powers of the Commission shall include, but not be limited to, the following:

A. To review and analyze selected regulatory topics and to provide guidance to agencies regarding the formulation of and/or revision to specific rules and regulations.

B. To review and analyze existing and/or proposed rules and regulations for the purpose of determining whether the rule is unreasonable or excessively burdensome or imposes undue hardship on those subject to the regulation.

C. To assess whether rules have a responsible cost-to-benefit ratio, i.e., whether the benefit derived from the rule exceeds the increased cost of goods and services or the increased cost to government resulting from the rule being imposed.

D. To adjudicate conflicts that exist between job creation

or retention and appropriate regulatory activities.

E. To search for less restrictive or less costly means to achieve the same result.

F. To advise relevant State agencies on the formulation of federally required State rules and regulations in a least cost, reasonable, and pro-economic growth fashion.

G. To make recommendations to the Office of the Governor regarding proposed changes to legislation which is regulatory in nature.

H. To advise the Office of the Governor regarding agency rulemaking and to offer recommendations that improve the state rulemaking process.

III. MEMBERSHIP AND DUTIES

A. The Commission shall consist of 5 members appointed by the Governor.

B. The Governor shall select a chairman from among the members of the Commission.

C. Members will serve without compensation but may be reimbursed for expenses.

D. The Commission will be provided staff support services by the Illinois Department of Commerce and Community Affairs, the Office of the Governor, and various regulatory agencies.

E. The Commission will release periodic reports to the Governor or his designee.

F. The Commission shall, in conjunction with the Illinois Economic Development Board, develop a process for the selected review of existing or proposed draft rules and shall provide this information to all State agencies under the jurisdiction of the Governor.

IV. ILLINOIS ECONOMIC DEVELOPMENT BOARD

A. The Illinois Economic Development Board shall recommend regulatory items that appear to be unnecessary or burdensome, for the Commission's review.

V. EFFECTIVE DATE

This Executive Order Number Two (1994) shall be effective upon filing with the Secretary of State.

Issued by the Governor January 13, 1994.

Filed with the Secretary of State January 13, 1994.

PROCLAMATION

94-007

DR. MARTIN LUTHER KING JR. DAY/DAY OF TRIBUTE

Whereas, on January 17, 1994, Dr. Martin Luther King Jr. will be honored by a national holiday dedicated to his memory; and

Whereas, Illinois was the first state in the union to recognize the significant contributions of Dr. King by

establishing a state holiday in 1973; and
Whereas, the State of Illinois has coordinated activities that have provided an opportunity for our citizens to reflect upon the principles of racial equality, justice, and nonviolent social change; and

Whereas, Dr. King dedicated his life so that all Americans could enjoy the freedom the United States Constitution guarantees every citizen, and each year the commemoration of Dr. King's birthday serves to remind Illinoisans of his profound message of justice and peace;

Therefore, I, Jim Edgar, Governor of the State of Illinois, proclaim January 17, 1994, as DR. MARTIN LUTHER KING JR. DAY in Illinois and January 14, 1994, as a DAY OF TRIBUTE to Dr. King at the James R. Thompson Center in Illinois.

Issued by the Governor January 6, 1994.

Filed with the Secretary of State January 13, 1994.

ACTION CODES	
A - Adopted Rule	P - Proposed Rule
AR - Adopted Repealer	PF - Prohibited Filing Order by JCAR*
C - Notice of Corrections	PP - Peremptory or Court Ordered Rules
CC - Codification Changes	PR - Proposed Repealer
E - Emergency Rule	R - Refusal to meet JCAR Objection
ER - Emergency Repealer	RC - Statement of Recommendation
M - Modification to meet JCAR objections	S - Suspension ordered by JCAR
O - JCAR Statement of Objections	W - Withdrawal to meet JCAR Objections
RQ - Request for Correction	
EC - Expedited Corrections	

*Joint Committee on Administrative Rules

ALL RULES ARE LISTED BY PART NUMBER AND HEADING ONLY. (FOR ACTION ON SPECIFIC SECTIONS, PLEASE REFER TO THE SECTIONS AFFECTED INDEX.) IF THERE ARE ANY QUESTIONS, PLEASE CONTACT THE ADMINISTRATIVE CODE DIVISION AT (217) 782-9786.

AGING, DEPARTMENT ON

89 Ill. Adm. Code 240 Community Care Program (A-609)

AGRICULTURE, DEPARTMENT OF

8 Ill. Adm. Code 257 Cooperative Groundwater Protection Program (P-14288/93; A-205)

8 Ill. Adm. Code 125 Meat and Poultry Inspection Act (PP-304)

CENTRAL MANAGEMENT SERVICES, DEPARTMENT OF

80 Ill. Adm. Code 310 Pay Plan (P-13657/93; A-227)

CHILDREN AND FAMILY SERVICES, DEPARTMENT OF

89 Ill. Adm. Code 428 Department Advisory Council, Ill. Juvenile Commission & Other Statewide & Regional Committees (P-561)

COMMERCE COMMISSION, ILLINOIS

83 Ill. Adm. Code 315 Pole Attachment Rates, Terms & Conditions Applicable to Cable Television Companies, Electric Utilities & Telecommunications Carriers (A-676; M-795)

COMMUNITY COLLEGE BOARD, ILLINOIS

23 Ill. Adm. Code 1501 Administration of the Ill. Public Community College (P-569)

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17 Ill. Adm. Code 1070	Possession of Specimens or Products of Endangered or Threatened Species (P-1)	
17 Ill. Adm. Code 4010	Register of Land & Water Reserves (P-578)	
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23 Ill. Adm. Code 245	Urban Education Partnership Program (P-10131/93; A-237)	
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56 Ill. Adm. Code 2770	Determination of Unemployment Contributions (P-17628/93; A-250)	
56 Ill. Adm. Code 2760	Notices, Records, Reports (P-16319/93; A-261)	
ENVIRONMENTAL PROTECTION AGENCY		
35 Ill. Adm. Code 184	Licensing of Industrial Hygienists (P-4)	
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41 Ill. Adm. Code 200	Storage, Transportation, Sale and Use of Liquefied Petroleum Gases (P-22)	
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2 Ill. Adm. Code 926	Access to Information (A-512)	
2 Ill. Adm. Code 925	Rulemaking and Organization (A-525)	
INSURANCE, DEPARTMENT OF		
50 Ill. Adm. Code 1103	Life Reinsurance Agreement (A-685)	
50 Ill. Adm. Code 2017	Uniform Medical Claim and Billing (P-37)	
POLLUTION CONTROL BOARD		
35 Ill. Adm. Code 304	Effluent Standards (P-15223/93; A-267)	
35 Ill. Adm. Code 720	Hazardous Waste Management System: General (P-337)	
35 Ill. Adm. Code 721	Identification and Listing of Hazardous Waste (P-357)	
35 Ill. Adm. Code 725	Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities (P-377)	
35 Ill. Adm. Code 728	Land Disposal Restrictions (P-388)	
35 Ill. Adm. Code 702	RCRA and UIC Permit Programs (P-406)	
35 Ill. Adm. Code 703	RCRA Permit Program (P-419)	
35 Ill. Adm. Code 724	Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities (P-439)	
35 Ill. Adm. Code 455	Standards for the Management of Used Oil (P-455)	
PROFESSIONAL REGULATIONS, DEPARTMENT OF		
68 Ill. Adm. Code 1315	III. Occupational Therapy Practice Act (P-590)	
68 Ill. Adm. Code 1285	Medical Practice Act of 1987 (RQ-21209/93; EC-312)	
PUBLIC AID, DEPARTMENT OF		
89 Ill. Adm. Code	Child Support Enforcement (P-497) (A-697)	
89 Ill. Adm. Code	Rights and Responsibilities (P-15461/93; A-273)	
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77 Ill. Adm. Code 250	Hospital Licensing Requirements (P-46)	
77 Ill. Adm. Code 505	Pregnancy Termination Report Code (P-13631/93; A-533)	
77 Ill. Adm. Code 547	Regional Ambulance Services Code (P-95)	
77 Ill. Adm. Code 420	Rules and Regulations to Carry Out Provisions of Titles XVIII and XIX of the Social Security Act Relating to Skilled Nursing and Intermediate Care Facilities (PR-103)	
RACING BOARD, ILLINOIS		
11 Ill. Adm. Code 206	Board Meetings (P-112)	
11 Ill. Adm. Code 208	Charitable Funds (P-115)	
11 Ill. Adm. Code 207	Executive Secretary (PR-124)	
11 Ill. Adm. Code 204	Hearings and Enforcement Proceedings (P-126)	
11 Ill. Adm. Code 433	Totalizer Operations (P-137)	
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92 Ill. Adm. Code 1060	Commercial Driver Training Schools (P-142)	
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92 Ill. Adm. Code 700	Construction in Floodways of Rivers, Lakes & Streams (P-607) (E-790)	
92 Ill. Adm. Code 397	Driving & Parking (A-736)	
92 Ill. Adm. Code 392	Driving of Motor Vehicles (A-740)	
92 Ill. Adm. Code 600	Employee Commute Options (P-12613/93; A-540)	
92 Ill. Adm. Code 395	Hours of Service of Drivers (A-743)	
92 Ill. Adm. Code 396	Inspection, Repair & Maintenance (A-749)	
92 Ill. Adm. Code 390	Motor Carrier Safety Regs. (A-754)	
92 Ill. Adm. Code 393	Parts & Accessories Necessary for Safe Operation (A-774)	
92 Ill. Adm. Code 386	Procedures & Enforcement (A-778)	
92 Ill. Adm. Code 391	Qualification of Drivers (A-783)	
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This Sections Affected Index lists, by title, each Section of a Part on which Rule Making has occurred in this volume (calendar year) of the Illinois Register. The columns indicate the type of rulemaking activity and the action taken along with the page number on which the first page of the notice of rulemaking activity appeared. If a Section on which action is being taken in the current volume of the Register is proposed in a previous volume, the last two digits of the previous volume's year appear immediately after the page number separated by a slash. (e.g. 11 Ill. Adm. Code 465.05 was proposed last year and adopted this year. The action entry reads: (P-15655/92; A-4520). The codes are listed below.

TYPE OF RULE MAKING		ACTION CODE	
am = amend to existing Section	A = Adopted Rule	PF = Prohibited Filing	
cc = codification changes	E = Emergency	S = Suspension	
n = New section	P = Proposed Rule	O = JCAR Objection	
r = repeal of existing Section	PP = Peremptory	F = Failure to Remedy Objections	
re = recodified	M = Modification	Objection	
# = renumbered	W = Withdrawal	RC = Recommendations	
	CC = Codification Changes	EC = Expedited Correction	
	RQ = Request for Correction	C = Correction	

1994

TITLE 2		926.260	am	(P-512)
925.10	r	926.270	am	(P-512)
925.110	am	926.280	#	(P-512)
925.120	r	926.290	#	(P-512)
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925.220	r	125.270	am	(PP-304)
925.230	r	257.10	n	(P-14288/93; A-205)
925.240	r	257.20	n	(P-14288/93; A-205)
925.250	r	257.30	n	(P-14288/93; A-205)
925.250	r	257.40	n	(P-14288/93; A-205)
925.250	r	257.50	n	(P-14288/93; A-205)
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925.250	r	257.70	n	(P-14288/93; A-205)
925.250	r	257.80	n	(P-14288/93; A-205)
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926.210	am	204.10	am	(P-126)
926.220	r	204.20	am	(P-126)
926.230	am	204.30	am	(P-126)
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926.236	#,am	204.60	am	(P-126)
926.240	#			
926.250	am			

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420.2	r	(P-103)	600.100	n	(P-12613/93; A-540)
420.10	r	(P-103)	600.110	n	(P-12613/93; A-540)
420.20	r	(P-103)	600.120	n	(P-12613/93; A-540)
420.30	r	(P-103)	600.130	n	(P-12613/93; A-540)
420.40	r	(P-103)	1060.5	am	(P-142)
420.50	r	(P-103)	1060.10	am	(P-142)
420.60	r	(P-103)	1060.20	am	(P-142)
420.61	r	(P-103)	1060.30	am	(P-142)
505.10	n	(P-13631/93; A-533)	1060.40	am	(P-142)
505.20	n	(P-13631/93; A-533)	1060.50	am	(P-142)
505.30	n	(P-13631/93; A-533)	1060.60	am	(P-142)
505.40	n	(P-13631/93; A-533)	1060.70	am	(P-142)
505.50	n	(P-13631/93; A-533)	1060.80	am	(P-142)
505.Ap.A	n	(P-13631/93; A-533)	1060.90	am	(P-142)
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547.500	n	(P-95)	1060.140	am	(P-142)
547.600	n	(P-95)	1060.150	am	(P-142)
547.700	n	(P-95)	1060.160	am	(P-142)
			1060.170	am	(P-142)
			1060.180	am	(P-142)
			1060.190	am	(P-142)
			1060.200	am	(P-142)

TITLE 80

310.495	am	(P-13657/93; A-227)
310.Ap.G	n	(P-13657/93; A-227)

TITLE 89

102.200	am	(P-15461/93; A-273)
102.210	am	(P-15461/93; A-273)
102.220	am	(P-15461/93; A-273)
102.230	am	(P-15461/93; A-273)
102.235	n	(P-15461/93; A-273)
102.240	am	(P-15461/93; A-273)
102.250	am	(P-15461/93; A-273)
160.60	am	(P-497)

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518.20	am	(P-12628/93; A-283)
518.750	am	(P-12628/93; A-283)
600.10	n	(P-12613/93; A-540)
600.20	n	(P-12613/93; A-540)
600.30	n	(P-12613/93; A-540)
600.40	n	(P-12613/93; A-540)
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600.60	n	(P-12613/93; A-540)
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600.90	n	(P-12613/93; A-540)